DOCUMENT RESUME

ED 159 090 SO 011 063

| | |
|---|---|
| TITLE | Wisconsin Women and the Law, Second Edition. The Governor's Commission on the Status of Women. |
| INSTITUTION | Governor's Commission on the Status of Women, Madison, Wis.; Wisconsin Univ., Madison, Univ. Extension. |
| PUB DATE | 77 |
| NOTE | 123p. |
| AVAILABLE FROM | Commission on the Status of Women, Room 210, 30 West Mifflin Street, Madison, Wisconsin 53703 ($0.50) |
| EDRS PRICE | MF-$0.83 HC-$6.01 Plus Postage. |
| DESCRIPTORS | Business; Credit (Finance); Criminal Law; Divorce; Economically Disadvantaged; Education; Employment; Family Planning; *Feminism; Housing; *Laws; Legal Aid; Marriage; Parent Responsibility; Sex Discrimination; Taxes |
| IDENTIFIERS | *Wisconsin |

ABSTRACT

This handbook is written to inform Wisconsin citizens of women's rights and responsibilities under Wisconsin and federal law. It is intended for use as general legal resource material. It is not intended to take the place of an attorney in the solution of individual legal problems. Each of the 12 chapters treats a particular subject or topic. Chapter 1 describes the legalities of marriage and discusses domicile, support during marriage, and property. Chapter 2 deals with divorce and legal separation. Divorce procedures, child custody, child support, alimony, name change, and property division are examined. Parental rights and responsibilities are treated in the third chapter. Support of children, child care, rights of illegitimate children and their parents, and termination of parental rights are discussed. Names, employment, and education are the topics dealt with in chapters four, five, and six respectively. Family planning is the topic of chapter seven. Taxation and social security are discussed in chapter eight. Chapter nine examines business practices and discusses public accomodations, housing, discrimination in insurance, and credit. Criminal law is examined in chapter ten and economically disadvantaged women in chapter eleven. The last chapter discusses the effects of the Equal Rights Amendment. Supplemental reading materials and a directory of services are provided in the appendices. (Author/RM)

**********
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
**********

ED159090

# WISCONSIN WOMEN AND THE LAW

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

## The Governor's Commission on the Status of Women

Second Edition

1977

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Norma Briggs

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC) AND USERS OF THE ERIC SYSTEM."

SO 011 063

**Patrick J. Lucey**
**Governor**

Published by University of Wisconsin–Extension

CN000-173
2/27/78

Additional copies are available from

The Governor's Commission on the Status of Women
30 West Mifflin Street
Madison, WI 53703

The second most fundamental revolution in the affairs of mankind [*sic*] on earth is now occurring. The first came when man settled down from hunting, fishing, herding and gathering, to sedentary agriculture and village life. The second is now occurring as women, no longer so concentrated on and sheltered for their childbearing and child-rearing functions, are demanding equality of treatment in all aspects of life, are demanding a new sense of purpose.

Quoted by the Carnegie Commission on Higher Education in its report, *Opportunities for Women in Higher Education*, September-1973.

We perceive nothing rational in the distinction drawn by a state law that makes a girl an adult at 18 but postpones that status until 21 for a boy . . . no longer is the female destined solely for the home and the rearing of family, and only the male for the marketplace and the world of ideas . . . if a specified age of majority is required for the boy in order to assure him parental support while he attains his education and training, so too, it is for the girl . . . if the female is not to be supported so long as the male she can hardly be expected to attend school as long as he does, and bringing her education to an end earlier coincides with the role-typing society has long imposed. Women's activities and responsibilities are increasing and expanding.

U.S. Supreme Court decision (Stanton v. Stanton, 95 SC 1373) on April 15, 1975, in striking down a Utah law that set a different age of majority for men and women.

# CONTENTS

**Acknowledgments** viii

**Preface** ix

1 **Marriage** 1
Legal Description
Domicile
Support During Marriage
Property

2 **Divorce and Legal Separation** 6
Procedure
Some Practical Pointers
Child Custody
Child Support
Alimony
Enforcement of Alimony and Child Support Orders
Property Division
Name Change
Some Changes Ahead

3 **Parental Rights and Responsibilities** 15
Support of Children
Child Care
Child Care Facilities
Childbearing and Child-Rearing Leaves
Rights of Illegitimate Children and Their Parents
Termination of Parental Rights

4 **Names** 22
Two Surname Usage
Changing Surnames
Official Notification of a Name Change
Children's Names

5 **Employment** 25
Discrimination Prohibited by Title VII
Discrimination Prohibited by the Wisconsin Fair Employment Act
Complaint Procedure Under Title VII and Wisconsin Law
The Federal Equal Pay Act
Age Discrimination
Employment Discrimination in Education
Federal and State Executive Orders
Litigation
Protective Labor Laws
Workers' Compensation and Unemployment Benefits

Occupational Safety and Health
Pensions and Retirement—Title IX
Union Membership

6 **Education** 37
Legislation Relating to Equal Educational Opportunities
Curriculum
Athletics
Grooming and Dress Codes
Pregnant Students
Enforcement and Complaint Procedures
Continuing Education and Women's Studies

7 **Family Planning** 45
Birth Control
Abortion
Sterilization
Rights of Minors
Artificial Insemination

8 **Taxes and Social Security** 49
Taxation
Federal Income Tax
State Income Tax
Homestead Tax Relief
Wisconsin Inheritance, Estate, and Gift Taxes
Federal Estate and Gift Taxes
Tax Planning and Divorce
Social Security
How the System Works
How the System Discriminates

9 **Business Practices** 60
Public Accommodations
Housing
Discrimination in Insurance
The Wisconsin Situation
Health Insurance
Disability Income Insurance
Life Insurance and Annuities
Automobile Insurance
Credit

10 **Criminal Law** 70
Women as Offenders
The Woman Offender
Juries
Sentencing
Correctional Institutions

Female Juvenile Offenders
Prostitution
Women as Victims of Crime
Sexual Assault
Physical Abuse of a Spouse

**11 Economically Disadvantaged Women 80**
Aid to Families With Dependent Children
Supplemental Security Income
General Relief
Medical Assistance
Food Stamps
Due Process Rights: AFDC, MA, Food Stamps
Due Process Rights: SSI
Due Process Rights: General Relief
Social Services
Free School Lunches

**12 The Equal Rights Amendment 87**
Effect of an Equal Rights Amendment

**Refereuces 93**

**Supplemental Reading Materials 103**

**Directory of Services 107**

# ACKNOWLEDGMENTS

The second edition of *Wisconsin Women and the Law* represents the work of a considerable number of people. We are especially indebted to the Wisconsin Legislative Reference Bureau for providing us with the services of Senior Legislative Attorney Linda Roberson, who undertook primary writing and editing responsibility for the revision. Special chapters were written by Attorney Kenna del Sol of the Legislative Reference Bureau (Employment); Attorney Anne De Leo of Milwaukee Legal Services (Economically Disadvantaged Women); and Attorney Priscilla Mac Dougall (Names). The following persons contributed sections to other chapters: Aurelia Strupp of Child Development, Inc. (child care); Attorney Catherine Doyle of the Wisconsin Department of Revenue and Kathleen Lieder (taxes); Marilyn Renninger, administrative assistant for the Wisconsin Assembly Committee on Insurance and Banking (insurance); and Jane Newby (credit).

Valuable editorial help came from Attorney June M. Weisberger, University of Wisconsin Law School, and Norma Briggs, Executive Secretary of the Commission on the Status of Women, who carefully scrutinized every chapter. Special thanks also go to other critics: Kathryn F. Clarenbach, chair of the commission; Attorney Helen Eunice Gibson, a commission member; Attorney Marygold S. Melli, University of Wisconsin Law School; Attorney Caroline Fribance, Center for Public Representation; Attorney Steven Steinglass, Milwaukee Legal Services; Attorney Kay Daut, Wisconsin Department of Public Instruction; Constance F. Threinen, specialist in Women's Education Resources, University of Wisconsin—Extension; Beatrice Kabler, Planned Parenthood; Anne Gaylor, Zero Population Growth; Attorney Janice Baldwin, Wisconsin Legislative Council; Attorney Barbara Heany, Wisconsin Legislative Council; Attorney Richard Z. Kabaker, University of Wisconsin Law School; Barbara Freedman, Division of Corrections, Department of Health and Social Services; Attorney Earl Buehler, Department of Health and Social Services; and Catherine East, coordinator of policies and plans for the National Commission on the Observance of International Women's Year.

We are grateful for clerical and support services provided by Patricia Stokes, Julane Stoppenbach, Darlene Harms, and Kathy Egli of the Legislative Reference Bureau. We are also indebted to University of Wisconsin—Extension for providing the skilled editorial services of Betty Linehan.

Finally, our thanks go to contributors to the first edition of *Wisconsin Women and the Law* for their work in laying the foundation for this handbook. Special mention should go to Dr. Kathryn Clarenbach, chair of the commission, to Attorney Priscilla Mac Dougall, and to commission member Marian Thompson.

# PREFACE

> Women shall have the same rights and privileges under the law as men in the exercise of suffrage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children, and in all other respects. The various courts, executive and administrative officers shall construe the statutes where the masculine gender is used to include the feminine gender unless such construction will deny to females the special protection and privileges which they now enjoy for the general welfare. The courts, executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purpose of this section—*Wisconsin Statutes*, Sec. 246.15 (1975).

This statute, virtually unchanged since its enactment in Wisconsin in 1921, was the first equal rights statute passed by a state legislature. While the provision might lead one to expect that women and men in Wisconsin would share equal rights and responsibilities, this has not been the case—employment laws, family laws, criminal laws, taxation and retirement laws, and laws regulating a wide variety of subjects ranging from insurance, education, and family planning have all treated men and women differently.

Since its formation in 1964, the Wisconsin Commission on the Status of Women has been concerned with women's legal rights. Each major commission report has addressed the subject and the 1968 *Wisconsin Women: Know Your Rights* received the American Bar Association's Gavel Award of Merit in 1969.

In 1975, Governor Patrick J. Lucey proclaimed International Women's Year and charged the commission with continuing "to bring us closer to full rights for women, in life and on the lawbooks." In partial fulfillment of that charge, the commission published its first edition of *Wisconsin Women and the Law*. The handbook was enthusiastically received and in less than a year 7500 copies have been distributed.

The combination of several happy events led the commission to authorize a major revision of the handbook in the summer of 1976. Most important, the Wisconsin Legislature, in its 1975 session, approved several landmark pieces of legislation that made giant strides toward eliminating sex-based discrimination. The Wisconsin Equal Rights Act—Chapter 94, *Laws of Wisconsin* (1975)—an omnibus law significantly affecting aspects of sex discrimination throughout the statutes, was overwhelmingly approved by the legislature and signed into law by the governor early in the session. Also significant were a comprehensive new sexual assault law—Chapter 184, *Laws of Wisconsin* (1975)—and a new inheritance tax statute—Chapter 222, *Laws of Wisconsin* (1975)—that improves the position of joint tenants and thus helps a dependent spouse who holds property in joint tenancy with a deceased spouse. The new laws make obsolete much of the information in the first edition of this handbook.

Second, reader response to our first edition was enthusiastic. We wanted to incorporate reader suggestions—and to correct misstatements or omissions—as soon as possible. Our thanks go to those who took the time to contact us; we deeply appreciate your efforts and eagerly anticipate comments on this second edition.

Finally, the Legislative Reference Bureau, in the waning days of the 1975 legislative session, was able to provide us with professional staff time for researching and writing the second edition. While we are deeply indebted to the Legislative Reference Bureau for its help, the commission emphasizes that all conclusions and recommendations included in this handbook are the sole responsibility of the commission and do not necessarily reflect the attitudes of the bureau or the private opinions of its staff members.

This handbook is written to inform Wisconsin citizens of women's rights and responsibilities under Wisconsin and federal law. It is intended for use as general legal resource material; it cannot take the place of an attorney in the solution of individual legal problems. Furthermore, the law changes rapidly, and subsequent legislation or court decisions may modify the material presented here.

A directory of services, with addresses and telephone numbers, and a bibliography for further reading are at the back of the handbook. Footnote references for all chapters appear in a separate section following Chapter 12.

The Commission on the Status of Women has planned the handbook's content and finances its printing. It is the hope of the commission that this handbook will enable Wisconsin women to know and exercise their legal rights more effectively. It is the further hope that the information presented here will encourage women to work together and, as citizens and as public officials, expand their rights and responsibilities.

Kathryn F. Clarenbach
January 1977

# 1 MARRIAGE

Under the old English common law, a woman lost virtually all control over her person and her property when she married. William Blackstone, writing his *Commentaries* on the laws of England in 1765, summarized the legal status of married women in the following words:

> By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing and protection she performs everything. . . . Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either of them acquire by the marriage. . . . The husband is bound to provide his wife with necessaries by law, as much as himself; and, if she contracts debts for them, he is obliged to pay them; but for anything besides necessaries he is not chargeable. . . . If the wife be indebted before marriage, the husband is bound afterwards to pay the debt; for he has adopted her and her circumstances together. If the wife be injured in her person or her property, she can bring no action for redress without her husband's concurrence, and in his name, as well as her own: neither can she be sued without making the husband the defendant. . . .
>
> The husband also, by the old law, might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer. But this power of correction is confined within reasonable bounds. . . .
>
> These are the chief legal effects of marriage during the coverture; upon which we may observe, that even the disabilities which the wife lies under are for the most part intended for her protection and benefit: so great a favorite is the female sex of the laws of England.[1]

The married woman's legal status has clearly improved since Blackstone's time. One great advance came in the nineteenth century, when Wisconsin, like most states, enacted legislation that allowed women to retain after marriage the general rights they enjoyed before marriage, such as the right to purchase property, to sue in their own names, and to obtain credit and be responsible for their own debts.[2]

Despite these changes, marriage laws in Wisconsin continue to reflect in many ways the presumptions of early English common law, which assured the dominance of the husband and the dependence of the wife. Women's groups are seeking to revise the marriage contract so that it reflects a partnership of equals. However, this effort deserves close scrutiny by all Wisconsin women because, as a noted legal scholar recently warned:

> The law governing the relationship between men and women who choose to enter into the holy state of matrimony is the most discriminatory body of law on the books and it promises to be getting worse as it tries to reform itself into getting better.[3]

## LEGAL DESCRIPTION

As defined by law, marriage is a contract between the state and a woman and a man who meet certain legal criteria.[4]

In Wisconsin, men and women can marry at the age of 16 with the consent of their parents or guardians and at 18 without such consent.[5] A divorced person may not remarry until six months from the date of the final decree and must show the decree when applying for a marriage license.[6] Details of material needed when applying for a marriage license may be obtained from the county clerk's office.

Various religions have different traditions with respect to marriage, but in law the contract is secular. As defined in the Wisconsin statutes:

> Marriage, so far as its validity at law is concerned, is a civil contract to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of husband and wife.[7]

Ordinarily, parties to a contract have available to them a written document specifying the terms of the agreement, which they read carefully before entering into the contract and to which they can refer if a dispute arises. The terms of the marriage contract are not spelled out for the parties in this way. The rights and responsibilities inherent in the marriage contract are explained, little by little, in statutes and court cases. Most people learn what the marriage contract obligates them to do, not at the time of marriage, but later, when the marriage terminates in divorce or by the death of a spouse.

The marriage contract differs from other contracts in another important way. In other contracts the parties are free to agree on whatever terms they choose, subject to general limits to prevent fraud and unfairness. A husband and wife, however, must accept a very rigid set of rights and obligations imposed by the state, which considers itself an indispensable party to the contract and reserves an almost exclusive right to changes its terms.[8] A husband and wife cannot work out their own system and contract for it; courts will not uphold such contracts on the ground that altering the "essential incidents" of the marriage contract is contrary to good public policy.[9]

According to the marriage contract, a husband is generally required to provide financial support for his wife. However, the law does not specify any standard of support, so a wealthy husband could legally provide only minimal food, clothing, and shelter for his wife and reserve the majority of his income for his own personal use.[10] In such a situation, the wife would have no recourse as long as the marriage remained intact. In return for this rather meager right to support, the wife is expected to provide services for her husband—housework, child care, and sexual services upon demand. (In Wisconsin a husband cannot be charged with the rape of his wife, evidence of

the fact that he has an unlimited right of sexual access.) The duty to provide services extends even to working without compensation in the husband's business. So in summary, the bargain is this: The wife performs domestic services in return for room and board.

## DOMICILE

According to Wisconsin law, a married woman may establish her own domicile, or legal residence, for the purposes of voting and running for public office.[11] However, for other purposes a wife's domicile is that of her husband.[12] Since domicile can affect such important matters as the disposition of property at death or divorce and state income tax consequences, this traditional rule severely limits a married woman's flexibility in controlling her property. An exception to the rule is made where a wife leaves her husband because of his cruelty, in which case she may establish a separate domicile.[13] Also, a wife may establish her own domicile for divorce purposes.[14]

Sex discrimination in the Wisconsin residency requirements for university tuition has been eliminated.[15] Marital status has no bearing on tuition charges, and each applicant for university admission, regardless of sex and marital status, must prove intent to establish residence. Previously, the wife, but not the husband, of a Wisconsin resident became immediately eligible to enjoy the lower cost of in-state tuition at state universities. For university tuition purposes, intent to establish residence in Wisconsin is judged by such acts as (1) filing a state income tax, (2) registering a motor vehicle, (3) qualifying for a Wisconsin driver's license, (4) employment, (5) degree of self-support, (6) voter registration, and (7) voting.

Sex discrimination has also been eliminated in residency tuition requirements for members of the armed forces. Prior to 1975, male members of the armed forces and their wives and children were considered eligible for resident tuition.[16] This has now been changed so that all members of the armed forces (regardless of sex) and their spouses and children will be considered residents for tuition purposes. This also applies to persons engaged in alternative service.

## SUPPORT DURING MARRIAGE

As common law, a husband was responsible for the support of his wife. Present support laws in Wisconsin generally provide that both spouses have the duty to support each other. If one spouse, without lawful or reasonable excuse, refuses to support the other (or the children of the marriage), s/he can be prosecuted to compel support, and the action will be enforced by contempt proceedings. However, it is the breadwinner who determines the standard of support, and as long as minimal food, clothing, and shelter are provided, the dependent spouse has no recourse unless s/he is willing to sue for divorce.[17]

Practically, however, the common-law responsibility of the husband to support his wife is still reflected in Wisconsin laws. Failure of a husband of sufficient means to support his wife adequately is still grounds for divorce or

legal separation.[18] (See Chapter 2, "Divorce and Legal Separation.") If a husband abandons his wife, he is subject to both civil and criminal penalties although a wife is not penalized for abandoning her husband unless he is disabled.[19] However, such laws are rarely invoked unless the wife is receiving public assistance.

## PROPERTY

Wisconsin, like most states, operates under a common-law or separate property system. This means that all income earned by either spouse belongs to that spouse alone, subject to the duty to support a nonearning spouse. This system works a great hardship on the spouse—usually the wife—who works in the home and does not earn income from an outside job. Despite her substantial contributions to the marriage partnership, the law does not recognize her domestic and child-rearing services as having any economic value. In Wisconsin, a housewife cannot establish credit in her own right; she must have her husband's permission to use his credit.[20] (See Chapter 9, "Business Practices," for a more detailed discussion of credit.) When a marriage ends, through death or divorce, a wife who has worked beside her husband for years to build a life together may find that he is or was a wealthy man and she is suddenly virtually penniless because the assets they have accumulated cooperatively over the years belong to the person who earned the money to pay the bills. Despite the labor contributed and sacrifices made for her family, the housewife has only a limited legal right to family assets, since her contributions are noneconomic; at divorce she is entitled to an "equitable" property distribution (usually approximately a third of the assets);[21] at the death of a spouse, the surviving spouse has a right to one third of the decedent's estate, even if a will provides less than this amount for the surviving spouse.[22]

In contrast, a number of southern and western states use a community property system in which a nonearning spouse's contributions are given economic weight.[23] In these states, all income earned and assets accumulated by either spouse during the course of a marriage belong equally to both spouses. In most community property states, the spouses together manage and control the community assets. Consequently, in a community property state, a housewife who does not work outside the home may establish her own line of credit, based on her right to manage the community funds. Spouses may also own separate property that they brought with them to the marriage, inherited, or received as gifts during the marriage. Additionally, they may enter into a contract specifying that certain assets belong to one or the other separately. But the legal presumption is that the income producer and the nonearner have contributed equally, though in different ways, to the acquisition of assets during the marriage, and consequently, each spouse is legally entitled to half of the total assets when the marriage ends. This presumption substantially improves the economic position of most married women, since it benefits not only the homemaker but also an employed spouse who earns less than the other spouse.

Through legislation and judicial action, Wisconsin is moving toward a more equitable assessment of the contributions of a nonearning spouse. In *Kersten* v. *Wisconsin Department of Revenue*,[24] a farmwife disputed the contention that she had not "contributed," within the meaning of our inheritance tax laws, to the value of the farm that she and her husband had worked together for many years. Although the property was legally owned by husband and wife, the state required Mrs. Kersten to pay inheritance tax on the entire value, since she could not prove that she had purchased any part with her own funds. The Wisconsin Supreme Court agreed with Mrs. Kersten that her labor had measurable monetary value, stating:

> [T]he threshold question . . . should be whether the services or contributions of the surviving spouse, taking into consideration their nature and extent, constitute adequate and full consideration in money or money's worth for such survivor's interest in the jointly held property.

It is important to note that the court assigned value only to the work Mrs. Kersten did on the farm. The decision is silent as to the value of homemaking and child care services.

At almost the same time, the state legislature enacted new legislation which presumes, for inheritance tax purposes, that each spouse has contributed half the value of many kinds of property that they own jointly.[25] Consequently, in those cases in which property was held by the spouses in joint tenancy, the financial position of a homemaker spouse at the death of the wage earner has substantially improved because noneconomic contributions are given economic weight. However, discrimination still exists in the allocation of economic power during the course of a marriage and when the marriage terminates in divorce. (See Chapter 2, "Divorce and Legal Separation," for a discussion of the latter problem.) Law reform in these areas is necessary if women and men are to be treated truly equally.

# 2 DIVORCE AND LEGAL SEPARATION

While it is simple and inexpensive to get married, the process for legally dissolving a marriage is intricate and often costly. This is because a marriage usually begins simply with a relationship between two people, but when it ends they have frequently acquired real or personal property, debts, uncertain future financial obligations toward one another, and children. The complexity of a divorce or legal separation depends on how many of these issues are involved and how much controversy exists between the parties.

At the present time, Wisconsin remains a *fault* state, and divorce and legal separation are adversarial legal proceedings. One party must allege that the other committed an act or created a situation that the legislature recognizes as grounds for terminating the marriage. Except that ground 7, below, obviously applies only to divorce, the grounds for divorce or legal separation are identical, and are (1) adultery, (2) imprisonment for three years, (3) desertion, (4) cruel and inhuman treatment, (5) habitual drunkenness for one year, (6) voluntary separation for one year, (7) legal separation for one year, (8) refusal of the husband to support his wife, and (9) a year's involuntary commitment to a mental institution. Any one or any combination of these grounds can be the basis for legal action. Ground 6, voluntary separation for one year, is very similar to no-fault divorce, in that there is mutual agreement and the parties need not assign blame, but simply have to prove that the separation occurred and was voluntarily entered into by both parties.[1]

The most commonly used ground for divorce or separation in Wisconsin is cruel and inhuman treatment. This is the only ground where corroboration, or supporting evidence, is not an absolute requirement for the granting of the divorce. The word of the plaintiff that the defendant said or did specific "cruel" things that affected the plaintiff's health is sufficient basis upon which the court may grant the divorce, where no supporting evidence is available.[2]

Legal separation is identical to divorce in procedure as well as grounds. To obtain a legal separation, the plaintiff must allege having a conscientious objection to divorce, or must have some other reason for not wishing to be divorced. This has been traditionally interpreted to mean religious scruples. The court has the statutory authority to hear a separation case and grant a divorce instead, or vice versa, even if the parties do not wish it. Parties are allowed to change divorce actions to separations, and the reverse, during the course of the proceedings. The legal distinction between the two is that divorced persons may remarry and those persons legally separated may not. Also, retaining the legal status of married persons has important financial ramifications because of tax consequences, insurance coverage, and survivors' benefits upon the death of a spouse. Because the two proceedings are so similar, the rest of this discussion refers only to divorce, but it holds true for separation as well.

## PROCEDURE

In order to sue for divorce in Wisconsin, the parties must first come within the jurisdiction of the court. At least one of the parties must have lived in Wisconsin for 6 months and in the county for 30 days before commencing the action.[3] However, the fact that a particular court has the power to grant a divorce does not necessarily mean that it has the authority to rule on the issues of child custody or support, alimony, or a distribution of property. These matters are legally determined by where the parties both reside, where the property or children are located, and whether persons outside the state are willing voluntarily to accept the jurisdiction of the court.[4] These are complex questions and competent legal advice should be sought.

Most legal actions other than divorce are started with the serving of a summons and complaint. In divorce, however, the defendant receives only a summons, and then a statutory two-month waiting period must expire before a complaint is served. (In cases with out-of-state defendants, an exception is made and the summons and complaint are served together.) After a complaint is served, two more months must elapse before there can be a trial. The law has these statutory waiting periods to give the couple an opportunity to reconcile.

After a summons is served, two things generally happen. In many cases a temporary hearing is held before the county family court commissioner. This hearing, held at the plaintiff's request, is to obtain an order that fixes the circumstances of the parties while the divorce is pending.[5] After a brief hearing, a court commissioner will decide such issues as which spouse may live in the family residence, who has temporary custody of the children, how much temporary child support and alimony is to be paid, when visitation should be held, and how property and debts will be allocated between the parties on a temporary basis. These decisions are not final, but they have great impact on how the individuals live during the time the divorce is pending.

Second, the court requires a judicial attempt to be made at reconciliation.[6] Depending on the size of the county and on local practice, either the family court commissioner or a social worker attached to the court will meet with the parties at least once to see if reconciliation is possible. Some counties make exceptions and waive this requirement in certain cases; other counties do not.

After the complaint is served, it soon becomes apparent whether the divorce is contested or will be a default divorce. If the defendant wishes to contest the divorce or the proposed terms, s/he may file an answer or a counterclaim either denying or responding to the plaintiff's charges.[7] If an answer or counterclaim is filed and not withdrawn, the court will have a trial on the merits, with both sides submitting evidence and the judge deciding whether there will be a divorce, which spouse will obtain it, and what the terms will be. Under Wisconsin law, the parties are not allowed to obtain a divorce by mutual consent, though they are often able to reach an agreement about the final terms of the divorce. When this is done, the agreement is put into a written document called a stipulation and is executed by the parties and

their attorneys. At the time of trial, the stipulation is introduced, the family court commissioner recommends that it be accepted, and the judge incorporates its terms into the divorce decree. The court has the power to reject or modify a stipulation if it believes the stipulation is unfair, but an attorney can usually determine if this is likely to occur.

After the four-month waiting period following service of the summons has elapsed, the matter may be scheduled for trial. The time of the trial depends on whether the parties have prepared all the necessary documents and are ready, and also depends on the backlog on each court's calendar. In a contested trial, both parties call witnesses and submit evidence concerning conflicts that pertain to the divorce itself, custody of the children, or division of property. In a stipulated default divorce, a very abbreviated trial is held, where enough testimony is taken to justify the court in granting a divorce and finding that the agreement of the parties should be accepted.

A judgment of divorce is entered by the court at the close of the trial. Written documents recording the judgment and the court's findings are then submitted. At that point the parties remain legally married for an additional six-month period. During those six months, they may not live together or remarry.[8] (However, should one of the parties die, they shall be deemed to have been divorced immediately prior to death.) If they wish to reconcile they need not remarry, but during those six months they can have the decree vacated. At the end of this period the divorce is final and the parties are no longer legally wed. Wisconsin law is peculiar in that the right to remarry is sometimes conditional. A divorced person with children who are not in her/his custody must obtain judicial permission to remarry.[9] Permission is based on whether s/he has met her/his financial obligations to her/his first family as ordered by the divorce decree. While this provision of the law is viewed by some as an effective tool for protecting divorced women and their children, there is a substantial question as to whether it violates the constitutional rights of persons wishing to remarry.

## SOME PRACTICAL POINTERS

It is certainly possible to obtain a divorce without having a lawyer. It is also possible for only one lawyer to be involved in obtaining a divorce. However, it is NOT possible for one lawyer to represent both parties because divorce is an adversary proceeding. A person should NEVER rely on the advice of a spouse's attorney because that attorney is duty bound to represent the interest of the client.

The decision to obtain legal representation must be a personal one. Proceedings without a lawyer should be considered only if three circumstances are present: (1) there are no children, (2) there is little property acquired, and (3) there is complete agreement during the marriage as to how property is to be divided. If these three conditions are present, a lawyer is needed only to supervise preparation of documents and presentation of testimony. Various self-help groups and public law libraries contain the necessary information; therefore, retaining a lawyer is essentially a matter of convenience. If any

other circumstances exist, it is essential to obtain legal services either through legal aid, if indigent, or by hiring a lawyer. A lawyer is a professional responsible for protecting the interests of her/his client, and in an adversary system it is important that each person's interests be protected.

Because legal fees vary greatly, the prospective client should inquire before retaining counsel what the cost is likely to be and on what terms payment may be made. In some cases a husband is ordered to contribute to his wife's legal fees, but the ultimate responsibility is hers. More important than fees, however, is the personal relationship, confidence, and ability to communicate freely with one's lawyer. The best way to select a lawyer is to talk with her/him and then decide. The consumer has no obligation to purchase a service unless it meets her/his needs. However, it should be noted that ending a marriage often means closing out an emotionally dependent relationship and facing life as a separate individual. Many clients tend to lean on their lawyers—expecting them to make difficult decisions and provide emotional support—in the way the clients formerly relied on their spouses. An attorney should give advice, but the client must be the decision maker. Lawyers are not trained as counselors or therapists and should not be used as such, although a good lawyer will often know marriage and divorce counselors who can assist throughout this difficult time.

A waiver of court fees can be requested for those unable to pay (indigent status) by filing a verified petition under penalty of perjury in a procedure called *in forma pauperis*.

## CHILD CUSTODY

While mothers traditionally have been viewed as the preferred custodial parent, in recent years divorced fathers have asserted their rights to be awarded child custody. Where the parents cannot agree on the choice of the custodian, the court must make a determination on the issue. If necessary, the court can declare both parents unfit and make the child a ward of the state.[10] Generally, however, custody is awarded to one of the parents. A parent does not have to be declared unfit in order for the other parent to obtain custody. Factors that a court may consider in determining which of two fit parents should be awarded custody include the financial circumstances of each parent, each parent's moral character and judgment, arrangements proposed by each parent for child care, testimony of professionals such as psychiatrists or social workers concerning the child's needs, and the child's preference. These and any other relevant factors are considered in determining the best interests of the child—the standard used in making custody decisions.[11]

According to the old English common law from which our current law has evolved, the father of minor children was automatically entitled to their custody. Wisconsin statutory and case law early replaced this absolute priority to the father with an almost equally rigid preference for the mother, arguing that, other things being equal, the child's welfare was best served by awarding custody to the mother.[12] Courts faced with difficult custody determinations forsook legal argument for eloquent discourses on the miracle of mother love:

> For a boy of such tender years nothing can be an adequate substitute for mother love—for that constant ministration required during the period of nurture that only a mother can give because in her alone is duty swallowed up in desire; in her alone is service expressed in terms of love. She alone has the patience and sympathy required to mold and soothe the infant mind in its adjustment to its environment. The difference between fatherhood and motherhood in this respect is fundamental and the law should recognize it unless offset by undesirable traits in the mother.[13]

During the 1960s, Wisconsin courts began to move away from such sentimentality, turning to a dispassionate analysis of the child's best interests as the determinative factor. Current law provides the following:

> In determining the parent with whom a child shall remain, the court shall consider all facts in the best interest of the child and shall not prefer one parent over the other solely on the basis of sex.[14]

A recent case has interpreted this provision to mean only that the preference given to the mother is not controlling but is one of a number of elements to be considered in a custody determination.[15] However, the court's holding in that case—reversing the arbitrary award of custody to the mother and ordering a new custody determination—indicates that rigid sex stereotyping as a basis for custody awards will not be upheld on appeal.

The issue of child custody is open to judicial review until the child reaches the age of 18.[16] Either parent may petition the court for a change of custody at any time, but to be successful s/he must show that a subtantial change in circumstances justifies the change in custody. The parents may also alter custody arrangements by mutual consent.

In most cases where the interest of a minor child is involved, the court will appoint an attorney called a *guardian ad litem* to represent the child's interest. A *guardian ad litem* is most likely to be appointed where custody is contested or where factors such as alcoholism or mental instability of a parent cause the court to become especially concerned about the child's welfare. The *guardian ad litem* independently studies the situation and often makes a recommendation to the court. Neither parent has any control over whether such an appointment is made or who is appointed, but either or both parents may be required to contribute to payment of the guardian's fee.

## CHILD SUPPORT

Wisconsin courts have authority to set a dollar figure for child support payments in entering a divorce decree. As in custody, alterations can be made by showing a substantial change in circumstances. Generally, only the noncustodial parent pays child support because the parent with custody is presumed to pay direct costs. If a father is the custodial parent, the mother often will be ordered to make support payments. Parental obligations cease at the time a child reaches 18, the age of majority in Wisconsin. Courts have applied this cutoff date to support orders entered before the age of majority

was lowered from age 21 to age 18, thus releasing parents from the last three years of that obligation.[17] However, the courts will enforce specific agreements in which a parent waives her/his right not to pay support and consents to provide support for a child beyond the age of majority or to finance higher educational or training programs.[18]

The court determines the amount of child support payments by balancing the child's needs and the noncustodial parent's ability to pay.[19] The parties generally must submit detailed budgets of income and expenses for the court to use in arriving at a figure. Payments are made and disbursed through the clerk of courts so that the court has a record of whether obligations are being met.

Along with support, most decrees have provision for problems such as extraordinary medical expenses, payments of health or life insurance for children, and which party may claim the children as dependents for tax purposes. These issues can be very complex and often require consultation with an attorney.

## ALIMONY

The concept of alimony is dying in Wisconsin. Alimony refers to payments of money made to one former spouse by the other, ending with the death or remarriage of the receiving individual. Long-term alimony is ordinarily granted only when the marriage has been of long standing, usually further conditioned by financial need. The concept of temporary alimony, sometimes called maintenance payment, is becoming popular in Wisconsin. This consists of payments to a spouse for a set period of time, usually with the intention of assisting her/him to become financially independent.[20]

The court considers a number of specific factors in determining whether to award alimony and in arriving at the amount of the award. These factors include: (1) the assets of the parties; (2) the parties' respective incomes and earning capacities; (3) the age and health of the parties; (4) the presence of minor children and their needs; (5) the special needs of the receiving spouse, if any; (6) debts owed by the paying spouse, if any; (7) the standard of living enjoyed by the parties during their marriage; (8) misconduct of a spouse, although this is not a controlling factor and alimony is not a penalty for wrongdoing; and (9) tax consequences, which are significant since alimony is considered as income for the recipient and is deductible by the payer.[21] No alimony may be granted to a party guilty of adultery.[22] A spouse who is awarded alimony may lose it by cohabiting with another person, even though s/he owes no duty of fidelity to the former spouse.[23]

If the initial judgment does not provide alimony for either party or awards alimony for only a limited period of time, that judgment cannot be revised with regard to alimony at a later date.[24] (In constrast, a child support order can always be revised to reflect the changing cost of living or other changes in financial circumstances.)

## ENFORCEMENT OF ALIMONY AND CHILD SUPPORT ORDERS

Compliance with child support and alimony orders is notoriously difficult to enforce, especially as time passes, emotional involvements wane, and the payer develops new financial and emotional commitments.[25] The extent of noncompliance is staggering; its impact is felt not only as an economic hardship for the individual families but as a serious financial burden for society as a whole. A 1972 study showed that, of 41,000 Wisconsin families receiving Aid to Families With Dependent Children (AFDC), 44 percent were dependent on welfare because court-ordered support payments were not made.[26]

This widespread evasion of legal and moral responsibility is a direct result of ineffective and inefficient enforcement procedures. The basic penalty for nonpayment is that the payer is held to be in contempt of court, punishable by fine or imprisonment.[27] Courts are understandably reluctant to impose either sanction, since both merely aggravate dilemmas caused by limited financial resources rather than offer a constructive approach to the problem of nonpayment. The court also may order a wage assignment, requiring that the amount of support owed during each pay period be removed from the payer's paycheck by the employer.[28] This alternative is limited in its usefulness, since it does not deal with the problem of past-due payments, is inapplicable for self-employed or unemployed payers, and is difficult to use when the payer has moved out of the state. However, it is effective where it can be applied and is an option which could be considered more frequently.

A 1975 federal law (PL 93-647) has authorized for the first time the collection of alimony and child support from the paychecks of federal employes and military personnel if backed by a state court order.[29] It is a landmark piece of legislation because, until it was passed, federal paychecks were untouchable by creditors. However, this new garnishment legislation leaves the initiative for taking action up to the 50 states. Furthermore, it has failed to establish responsibility for garnishment machinery or guidelines as to how it is to be handled. As a result, most federal agencies are floundering and the women who are awaiting court-ordered payments can get little satisfaction from the government. Congress, or the President through an executive order, will have to designate administrative responsibility.

Most states (including Wisconsin) have agreed to cooperate in the prosecution of persons who have been ordered to pay support in one state and who have moved to another state and stopped making the required payments. According to this agreement, law enforcement officials in another state may apprehend and return such persons to Wisconsin, if requested to do so by the governor.[30] The procedure is cumbersome and expensive, however, and is rarely used.

In summary, for literally thousands of Wisconsin homemakers and their children a court-ordered child support or alimony award is merely an empty promise. A creative and effective approach to the difficult problem of enforcing these orders is urgently needed.

## PROPERTY DIVISION

Because of the decreasing use of alimony and because of the difficulties of enforcing compliance with support orders, the division of the parties' property has become the primary factor in the distribution of financial resources between the divorcing husband and wife. In order to distribute major financial resources, property division often involves payments made by one party to the other over a period of years, as well as dividing material possessions. For example, when the couple owns a home, the decree often gives the house to one party and requires compensation for the other's interest over a period of years or when the house is sold. The concept of property division is flexible and the means of effecting it are varied.

The court considers all relevant factors in determining how the assets and debts acquired during a marriage are to be divided. While there is no clear standard establishing the proportion of the resources that goes to each party, a split of one third to the wife and two thirds to the husband is common. However, recent cases have permitted a more equitable distribution. In one such case the parties had been married for 26 years and the wife had supported the family while the husband went to medical school. She had not worked outside the home since the birth of their first child, and at the time of the divorce she wished to remain in the home to care for their minor daughter. The Wisconsin Supreme Court, reviewing the trial court's award of 39 percent of the property to the wife, held that that amount "undervalues her contribution to this marriage of 26 years and amounts to an abuse of discretion."[31] The court increased her award to 48 percent of the net estate.

The factors a court may consider in determining how property is to be divided include: (1) the length of the marriage; (2) the age and health of the parties; (3) the parties' abilities to support themselves; (4) liability for debts; (5) liability for child support; (6) misconduct, although the property division is not a penalty for wrongdoing; (7) whether the property division is in lieu of or in addition to alimony; (8) whether the property was acquired during the marriage or brought to the marriage by one of the parties; (9) whether assets are to be sequestered for the future needs of children of the marriage; and (10) tax consequences.[32] Traditionally, women have not been compensated by any direct measurement of their service within the home. Here again, forceful legal representation can make a crucial difference in the outcome of a divorce. It should be noted that under a community property system discussed in Chapter 1, each spouse would presumably be entitled to one half of the marital assets at divorce—a presumption that could be modified by the factors in each individual case. This situation, where the homemaker has a legal claim to one half of the property, treats a nonwage earner more favorably than does current Wisconsin law where the homemaker must depend on good will or extraordinary circumstances to receive more than one third.

## NAME CHANGE

At the time a divorce is granted, the court is required to permit either spouse to resume a former name upon request of that spouse.[33] Previously, a woman who received or paid alimony or who had custody of children was not permitted to resume a former name, and no provision was made to allow men who changed their names at marriage to resume a former name. These problems were corrected by the 1975 legislature. (See Chapter 4 for more information about name changes.)

## SOME CHANGES AHEAD

Reform is on the horizon for Wisconsin divorce law. Proposals for legislative revision fall into two major categories. One approach is simply to add a no-fault ground to our current grounds for divorce or, alternatively, to replace all existing grounds with a no-fault ground. The emphasis with this approach is to facilitate the humane dissolution of a marriage by eliminating the legal requirement for allocating blame to one party, and thus to prevent much of the bitterness and rancor characteristic of the adversary divorce process.

The second approach is that taken by the Uniform Marriage and Divorce Act, a comprehensive model statute approved in 1974 by the American Bar Association. This approach also moves to a no-fault basis for divorce, but in addition it provides economic protection for a dependent spouse and minor children through enforcement alternatives not available under current law. Supporters of this approach believe it is important to deal legislatively with the ramifications of divorce as well as with the legal process. They believe that revision of the grounds alone will simply encourage breadwinners to shed their families without accepting any responsibility for the family's welfare. Additionally, it seems likely that a revision limited to changing the grounds for divorce will take the momentum out of the reform effort, making it more difficult to achieve needed economic protection for dependents in the near future. Consequently, it appears desirable to consider deliberately and carefully divorce in its full social and economic context and to work toward comprehensive reform rather than piecemeal patching of an obsolete and inadequate system.

# 3 PARENTAL RIGHTS AND RESPONSIBILITIES

Historically, a child's mother has performed the primary parenting tasks, while the father has been held responsible mainly for providing financial support. Today these rigid role distinctions are fading. Mothers of almost 27 million children in the United States are employed outside the home.[1] Fathers are asserting their parental rights and taking a more active role in caring for their children. The law reflects many of these changing circumstances as well as the uncertainty of transition.

## SUPPORT OF CHILDREN

Traditionally, the father of a minor child has been held accountable for the child's financial support. This has been true whether or not the child's parents are married; in the case of a child born out of wedlock, a man who acknowledges paternity or who is adjudged the father in a paternity proceeding is responsible for the child's support. According to Wisconsin law, a county public assistance agency may seize the property of a man who fails to provide for his wife or minor children. A woman's property can be seized for the same reason, but only if she is a widow or is living separate from her husband.[2] However, any parent—mother or father—who fails to support any minor child born in or out of wedlock is subject to prosecution under the Uniform Abandonment Act,[3] a felony charge, and also under the state failure to support statute,[4] which carries a misdemeanor penalty. No parent is legally responsible for the support of a child 18 years of age or older.[5]

Recently enacted federal legislation created a federal Parent Locator Service, administered under the auspices of the Department of Health, Education and Welfare (HEW), which has the responsibility for locating absent parents in order to enforce compliance with child support obligations.[6] The State Department of Health and Social Services is the local agency which provides location assistance in Wisconsin.[7] The federal law also requires state agencies to bring paternity actions for out-of-wedlock children who receive AFDC and to take necessary steps to collect child support payments from absent parents.[8] Consequently, a person wishing to receive AFDC must cooperate in efforts to establish the paternity of any children born out of wedlock and must assign support rights to the state.[9] A person who refuses to cooperate will be denied assistance, although the children involved may still receive aid. In the past, state agencies have been reluctant to enforce child support obligations. Now that federal law requires active enforcement on the state level, more absent parents will be held accountable for their obligations to their children.

## CHILD CARE

Child care has been viewed traditionally as the responsibility of the mother. Women have been expected to remain in the home performing this

function, at least until their children reach school age. Today, the financial burden of raising a family, coupled with the growing number of single-parent families, has made the traditional approach impossible or inappropriate for many parents. Also, many mothers wish to continue their careers or education with only a short interruption following the birth of a baby, and many fathers wish to take a more active role in the upbringing of their children. Consequently, the availability of child care services and opportunities for childbearing and child-rearing leave from paid employment have become issues of growing concern for parents.

### Child Care Facilities

The term *child care* encompasses a wide range of part-day or full-day services—in-home care, group care, after-school care, or extended care—provided by public agencies and private organizations or individuals. Whatever the form and whoever the sponsor, quality child care is expensive, with estimates as high as $2500 to $3500 a year per child. Thus, funding is a crucial issue if services are to be accessible to all those who need them.

Today, the limited public money going into child care pays for the service in conjunction with a broader assistance program. Parents who need financial assistance for child care in order to be employed may qualify for AFDC, Work Incentive (WIN), and Purchase of Service (Title XX). These programs are federally legislated, funded by combinations of federal and state dollars, and implemented through federal and state regulations.

In Wisconsin, county social services departments administer these programs, and each county determines the maximum amount that will be paid for child care services. Frequently, there are wide differences between what is required of child care providers by state and federal regulations and what will actually be paid by the county.

All too often, at both the state and county levels, decisions related to child care are based on what is the cheapest rather than what is the best for a child's development or for a family's functioning. These decisions are extremely difficult to monitor because they are often imbedded in regulations for other types of social services and are frequently indirect in their impact on child care. An example is a Wisconsin Department of Health and Social Services decision that counties will pay for child care on an hourly rate rather than the daily rate used by centers. That decision may save the state some money, but by requiring an hourly attendance record keeping, higher administrative costs are passed on not only to those who receive public assistance but to all who use the service.

Vice-President Walter Mondale, when he was in the Senate, and Representative John Brademas introduced the Child and Family Services Act of 1975, designed to provide financial assistance to help state and localities improve the quality of child care services and to expand these services for children and families. According to the bill, child care programs must be totally voluntary and must build upon and strengthen the role of the family as the primary and fundamental influence on the development of the child. Local control would be developed through the establishment of prime sponsor

groups at the local level who would distribute funds and evaluate the effectiveness of programs. Former President Ford vetoed this bill after its passage by the Senate and the House of Representatives. While the Senate was successful in overriding the veto, the House failed to override and consequently the bill died without becoming law. Because of the strong support of the 1975 bill, a similar proposal will probably be introduced in the current legislative session.

A different approach to funding makes use of block-grant programs for social services, health, child nutrition, and education. The block-grant concept eliminates many of the categorical programs that now exist. All funding would be sent directly to the states with few federal stipulations. In general, local and state officials are enthusiastic about the block-grant program because there are few controls on how the money will be spent. Child care advocates, however, fear that this program would decrease the total amount of money available for services because states would no longer be required to provide a local share of funds.

Wisconsin's Children's Code provides for the licensing of a variety of child care facilities and establishes minimum protection for children being served.[10] Licensing under the code is required when care is provided for four or more children who are not related to the care giver and are under the age of seven. Since most child care is provided in very small groups in homes, the majority of children being cared for by someone other than their parent(s) are not now protected by Wisconsin law. In addition, the division of responsibility as established between the Division of Family Services and county social services departments has made it difficult, if not impossible, to maintain uniform quality standards for services.

### Childbearing and Child-Rearing Leaves

In the past, restrictive employment policies have forced many women to choose between parenthood and a career and have prevented many men from participating fully in family life. Typically, women have been required to quit their jobs during pregnancy or they have been forced to take long, unpaid maternity leaves, often lasting from midpregnancy until the child is several months old. At the same time, expectant and new fathers have been unable to go on leave to accept additional family responsibility at the birth of a child.

In 1972, the Equal Employment Opportunity Commission promulgated guidelines on pregnancy discrimination that require employers to treat pregnancy-related disabilities as any other temporary disability. This means that commencement and duration of leave, reinstatement, seniority, use of sick leave benefits, and other matters must be handled for pregnancy in the same way they are handled for other disabilities.[11] Specifically, a woman cannot be required to take leave until the need is medically indicated, and she may not be prevented from returning to work if she is medically ready to return. The U.S. Supreme Court held that a woman's constitutional rights were violated by a mandatory, unpaid maternity leave policy that required women to leave their jobs in midpregnancy and did not permit their return until several months after the birth of the baby.[12]

However, the U.S. Supreme Court has held that refusal to include disabilities related to normal pregnancy in an otherwise comprehensive disability insurance benefits program does not constitute sex discrimination either under the U.S. Constitution or under Title VII, the federal law prohibiting sex discrimination in employment. The Court first ruled that a state-run disability program may exclude pregnancy-related disabilities from its coverage, and that such an exclusion is not unconstitutional sex discrimination, reasoning that:

> The program divides potential recipients into two groups—pregnant women and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes. The fiscal and actuarial benefits of the program thus accrue to members of both sexes....There is no risk from which men are protected and women are not. Likewise, there is no risk from which women are protected and men are not.[13]

The Court more recently used this same reasoning to hold that exclusion of pregnancy-related disabilities from a private employer's disability plan does not violate Title VII's prohibition against sex discrimination in employment. The Court stated clearly that a distinction based on pregnancy is not in itself sex-based discrimination. Noting that inclusion of pregnancy coverage would substantially increase premium costs, the Court argued:

> As there is no proof that the package is in fact worth more to men than to women, it is impossible to find any gender-based discriminatory effect in this scheme simply because women disabled as a result of pregnancy do not receive benefits; that is to say, gender-based discrimination does not result simply because an employer's disability benefits plan is less than all-inclusive. For all that appears, pregnancy-related disabilities constitute an additional risk, unique to women, and the failure to compensate them for this risk does not destroy the presumed parity of the benefits accruing to men and women alike, which results from the facially evenhanded inclusion of risks.[14]

This argument ignores the fact that a disability program which, while granting disability benefits generally, denies benefits for disabilities related to pregnancy—a condition unique to women—by definition discriminates against women because its coverage is less comprehensive than it is for men. Virtually all women at some point in their lives become pregnant or risk becoming pregnant. No health risk so significantly affecting men is excluded from the benefits program. The absurdity of the Court's conclusion that this exclusionary treatment of pregnancy is not sex discrimination becomes readily apparent when one realizes that the same rationale could be used to exclude from coverage treatment for prostate problems, which afflict only men, or sickle-cell anemia, a disease found only among blacks. Obviously, such a denial of benefits for disability due to such traditionally legitimate medical problems has not been contemplated.

In the time period between these two U.S. Supreme Court decisions, the Wisconsin Supreme Court held that a private employer's policy providing a maximum of 6 weeks of benefits for pregnancy-related disabilities but 26 weeks of benefits for other temporary disabilities violated the Wisconsin Fair Employment Act, reasoning that "Pregnancy is undeniably a sex-related characteristic and...the effect of the plan is to discriminate against women employees, all of whom presumably have the capacity to become pregnant."[15] The Wisconsin court indicated that greatly increased costs incurred in expanding temporary disability benefits to include pregnancy-related disabilities might provide a sufficient justification for continued discrimination. While the cost factor may be a severe obstacle, distinctions based on pregnancy are considered to be sex discrimination under Wisconsin law. And subsequent to the U.S. Supreme Court's most recent decision, the highest court in the state of New York, in applying the New York fair employment law, rejected the rationale of the U.S. Supreme Court and applied the reasoning of the Wisconsin Supreme Court to conclude that exclusion of pregnancy-related disabilities constitutes sex discrimination.[16] Thus, this important issue is by no means settled; it remains unclear whether Wisconsin women will continue to suffer discrimination in the area of pregnancy-related disability benefits.

One way to resolve the issue would be to enact legislation which clearly states that pregnancy-related disabilities must be treated as all other temporary disabilities for disability insurance purposes. In response to the U.S. Supreme Court's decisions, the California legislature has already passed such a statute.[17]

Both mothers and fathers are capable of caring for young children. Many parents believe that it is important for at least one parent to remain in the home for a period of time following the birth of a baby, to aid the family in adjusting to the new arrival. In the past, the mother usually took on this task as employment practices required her to relinquish her job or take a long, unpaid leave. As these practices have grown less restrictive, more new mothers are returning to their careers soon after the baby's birth, and some fathers are requesting the opportunity for leave to care for a new baby.

Neither state nor federal law requires the provision of child-rearing leave. As soon as a new mother is physically capable of returning to work, her employer may require that she do so. No leave need be granted to expectant or new fathers or to parents who adopt children. However, an employer who permits women employes to take leave for child-rearing purposes may not prevent men from doing so.[18]

## RIGHTS OF ILLEGITIMATE CHILDREN AND THEIR PARENTS

According to the old English common law, a child born to a single woman was considered to be the child of no one, possessed no rights, and could not inherit from either its mother or its father.[19] The law has gradually evolved to offer more protections to such children. However, the stigma attached to the status of illegitimacy is still great, and its social and legal disabilities are significant.

The birth certificate of a child born out of wedlock is kept by the register of deeds in a separate file and cannot be inspected or copied except upon court order.[20] While this restriction on the availability of the birth certificate was designed to protect such children and their families from embarrassing public scrutiny, it has led to harassment of the mothers of children born out of wedlock who need copies of the birth certificate to enroll their children in school, to prove age for a first driver's license, or for other legitimate reasons.

A child whose parents are not married to each other is legally entitled to support from both parents, just as a child born to married parents has a right to support.[21] However, the father of an illegitimate child must acknowledge his paternity or must be adjudged the father in a paternity proceeding before he is held liable for support.

Recent U.S. Supreme Court cases have expanded the right of an illegitimate child to obtain support from the government in situations where a legitimate child is entitled to government support, such as Social Security survivors' benefits,[22] workers' compensation,[23] and state welfare programs.[24] Other cases have established the right of illegitimate children to maintain court actions for compensation for their mother's wrongful death.[25] However, the Court has not been willing to accord full rights to children born out of wedlock. Such children, simply because of the circumstances of their birth, may be precluded from inheriting from a parent who died without a will[26] and may be required to meet a higher standard of proof of dependency in order to receive benefits.[27]

Traditionally, the father of an illegitimate child had no rights or responsibilities concerning the child. Through statutory enactments and court decisions, a responsibility for support evolved, but no rights developed along with that responsibility. As a result, unwed fathers who lived with their children and functioned as parents often were unfairly treated. A landmark case decided by the U.S. Supreme Court in 1972 established the principle that a concerned and interested unwed father has constitutionally protected parental rights.[28] The case was brought by an unwed father who had lived with and provided for his children and their mother. When the mother died, the children were removed from their father's care and placed in foster homes. The U.S. Supreme Court held that this father had a right to bring up his children, and consequently the family was reunited. Since that time, other court cases have upheld the rights of unwed fathers.[29] Recently, a New York court awarded custody of his children to an unwed father over the mother's objections, applying the same standard (the best interests of the children) that would have applied had the children been legitimate.[30]

Despite the fact that our law is moving toward the protection of members of families where a legally recognized marriage has not occurred, much discrimination is still permitted and the social stigma attached to being an unwed mother or an illegitimate child is still severe. Legal formalities provide an arbitrary and unsound basis for the parent-child relationship. Assessment of parental rights and responsibilities should be

determined by need and ability, not by the sex of the parent or the circumstances of the child's birth.

## TERMINATION OF PARENTAL RIGHTS

While parents usually have the right to determine how to bring up their children, courts will step in to protect children where they are not properly cared for. In some instances, children may be taken away from their parents and parental rights terminated. This means that the children no longer have legal ties to the parents and become wards of the state, eligible for adoption or placement in a foster home. An extreme procedure, it is used only in situations where the parents have consistently failed to carry out their responsibilities to their children: where children have been abandoned or have been deprived of necessary care, where parents have refused to support children, or where the parents are unfit due to alcoholism, drug addiction, mental illness, or criminal activity.[31] Parents must be notified of an attempt to terminate parental rights and must have an opportunity to be heard before rights are terminated.[32]

Frequently an unwed mother will voluntarily terminate her rights to her child so that the child may be adopted as an infant into a family with two parents. Wisconsin law requires that the putative father's rights also be terminated before the baby may be adopted, and further requires that even an unknown father be notified of the proceeding.[33] Consequently, in almost every case where an unwed mother chooses to release her child for adoption but does not know the father's whereabouts or is uncertain as to his identity, a legal notice is inserted in the newspaper once each week for three consecutive weeks. The notice specifies the names of the mother and child and invites the anonymous father to assert his rights. This publication requirement inflicts humiliation upon vulnerable young women at a time when they face severe social and emotional pressure. It increases the already heavy burden of embarrassment and guilt borne by the unwed mother and her family.

This invasion of privacy is neither legally necessary nor justifiable on humanitarian grounds. Although the Wisconsin Supreme Court appears to believe that constructive notice to an unknown or unreachable father is constitutionally necessary,[34] the U.S. Supreme Court has required notice only where the unwed father is concerned and involved in planning for the child.[35] Other portions of our law adequately protect the concerned and interested father;[36] the publication procedure is used only where the father is so uninvolved as to be unaware of the mother's pregnancy, or where he is so unconcerned about the matter that he does not file a declaration of paternal interest. Not surprisingly, the publication of the mother's name has not to date led to the discovery of any unwed father who wished to participate in his child's upbringing.[37]

# 4 NAMES

Under Wisconsin law an adult person can adopt the surname(s) of her/his choice for all legal and social purposes. This is true for single, married and divorced women and men. When a person uses two separate surnames or changes a surname, s/he must be cognizant of state and federal requirements with respect to changing records and recording changes of name.

Wisconsin has no law requiring a woman to change her surname at marriage or to use the same surname as her husband for official purposes during marriage, although she is entitled to do so if she chooses (as is her husband entitled to change his name or use the same surname as his wife).[1] A woman wishing to use her premarriage name during marriage must "customarily" and "habitually" continue to use it. She does not need to use it "exclusively," but she must use it "consistently" for the purposes she decides to use it.[2]

If a woman does elect to use her husband's surname, she may call herself Mrs. plus her husband's full name (e.g., Mrs. John Jones), but for official state and federal records she should use her own first name with her chosen last name (e.g., Mary Jones).

A married woman who chooses to use her premarriage surname during marriage need not notify any government agency of any change in marital status. Almost all state and federal agencies have issued instructions that married women can use surnames which differ from those of their husbands on official records, including drivers' licenses, voting registrations, notary public commissions, passports, Social Security cards, and income tax returns. The Wisconsin Department of Revenue does ask married couples bearing different surnames to file separate rather than joint tax returns. (In Wisconsin there is no advantage to filing joint returns.) Federal tax returns may be filed jointly even with separate names.

## TWO SURNAME USAGE

Married women, in particular, often wish to be known by two different surnames, usually keeping a premarriage surname for professional purposes, while adopting a husband's surname in private life. Some men also use different surnames for different purposes. This is perfectly legal for both state and federal purposes. The Wisconsin Division of Motor Vehicles, Department of Transportation, recognizes the right of married women to drivers' licenses in either their premarriage or married names. The U.S. Passport Office acknowledges two-name use by issuing passports to persons who use two surnames with an a/k/a (also known as) to one of the names. The only Social Security surname requirement is that a person's card be in the name s/he works under. If a woman decides to use two surnames, she should decide for what purposes she will use each name and then use the names consistently for such purposes.

## CHANGING SURNAMES

Under the common law that Wisconsin has adopted in its constitution, a person gains a name by usage and can change it (regardless of marital status) without formal judicial proceedings. Adopting the surname of one's spouse is a common-law procedure.[3] A growing number of women and men are hyphenating their surnames with those of their spouses—again, a common-law procedure. (The Division of Motor Vehicles will type hyphens on drivers' licenses but cannot put them on computers.) Many married women who adopted their husbands' surnames are changing back to their premarriage names via the common-law procedure. In some professions, a licensing agency must approve any name change, except a change arising from marriage or divorce, to ensure that there is no infringement of the professional rights of others. For certain professionals, then, the common-law procedure may not be sufficient.

Names may also be changed by judicial decree.[4] While not a requirement, judicial action has the advantage of providing a quick, efficient record of change. Court costs are about $50. An individual can apply for waiver of costs under the *in forma pauperis* procedure if s/he cannot afford them.

Judicial decree is usually a simple, informal proceeding and should not require a lawyer. A petition that states present name, age, residence, and name change to be recorded must be filed in the county of residence with the county or circuit court clerk. The reason for the change need not be stated. This procedure does not require the consent or agreement of spouse or parents.[5] If an applicant is a professional in Wisconsin or elsewhere, this information should be included in the petition.

After the petition is filed, a judge will be assigned and a hearing date set, which must be far enough in the future to permit the petitioner to publish notice of the hearing once a week for three consecutive weeks in a newspaper published in the petitioner's county or in the *Wisconsin State Journal,* which is currently designated by the Wisconsin Legislature as the official state paper. If no one appears against the petition, the name change should be automatically granted. The petition should be denied only if there is a finding of fraud.[6]

Another way to change one's name by judicial decree is to do so pursuant to a divorce decree. *Either* party to a divorce may change her/his surname at the time the divorce is granted, to *any* former surname.[7] The court has no discretion to deny the change. This is a new law, and many attorneys are not yet aware of it.

## OFFICIAL NOTIFICATION OF A NAME CHANGE

Official notification of a name change is required whether the name is changed by the common-law method or by judicial decree. All agencies and creditors which keep records on a person under her/his name must be notified when there is a change. This is accomplished easily by court order, but just as easily for most purposes by a personal statement that the name has been

changed. Under the common-law method of name change, a personally executed, notarized affidavit stating that a name has been changed facilitates the changing of records, although it is not necessary to use such an affidavit. The following persons and agencies should be notified of a name change: the Social Security office, Division of Motor Vehicles (both for vehicle registrations and drivers' licenses), employer, college or university if the individual making the change is a student, banks, creditors, insurance agents, and voting officials.

Changing federal records without a court order is more difficult than changing state records. A new passport can be obtained in any prior surname immediately upon a name change, but will be given an a/k/a designation of the former name on the passport for one year. However, the a/k/a designation cannot be acquired when adopting a brand new name (except a husband's name or hyphenated names of a married couple) until the new name has been used exclusively for two years. Nor can the passport be issued in the new name exclusively until the new name has been used for ten years.

## CHILDREN'S NAMES

Naming children is generally up to parents. Traditionally, a child born in wedlock is given its father's surname at birth and uses it thereafter, and a child born out of wedlock is given its mother's surname at birth and bears it thereafter unless it is later legitimated and given its father's name. No law mandates this, however, and the state attorney general has ruled that the naming of legitimate children at birth is a right of both parents, and the naming of illegitimate children is the right of the mother.[8] Children's names can be changed by usage, just as adults' can, but if one parent of the child objects to the change, s/he can bring a lawsuit against the parent unilaterally changing the name. Such actions are unusual, and the probability of success dubious unless the change is patently against the child's best interests. It is being argued increasingly that, where there is a disagreement as to the naming of a child after divorce, the custodial parent has the predominant right to determine the child's name in line with its best interests. It is common for a divorced mother who has remarried and adopted her new husband's surname to change her children's surname to that name as well.

A child over the age of 14 can change her/his name by judicial decree by herself/himself.[9] A judicial decree for a change of name of a child under 14 years of age must be petitioned for by both parents of a child born either in wedlock or out of wedlock.[10] If parental rights have been terminated, the child's legal custodian may petition for the change. Otherwise, the same procedures as for adult name changes apply to statutory name changes for children. If no one appears against the petition it should be automatically granted. A petition should be denied only if there is a finding that the change is against the best interests of the child, based on evidence by an objecting party.

# 5 EMPLOYMENT

Paid employment is an increasingly significant part of the lives of women. Four out of ten paid workers are women, and estimates indicate that in another decade half of the labor force will be female. Whether she is married or single, the probability of a woman's being employed is growing, the years she is likely to spend in employment are increasing, and the importance of a woman's income is becoming greater.

Historically, women have been regarded as marginal workers whose incomes merely supplemented the incomes of their spouses. As a result, women workers have been sought by the labor market only when there was a shortage of workers (as during the war years). Generally, they have been assigned to low-paying, low-prestige dead-end occupations labeled "women's work." In fact, over half of the women in the labor force are working because of pressing economic need; either because they are single, heads of households, or because their husbands earn an income below the poverty level.[1]

In recent years, public policy and the law have moved to recognize and prohibit as illegal discrimination many practices that disadvantage women and family members who depend on the income of women. Despite the prohibitions against discrimination, the income gap between men and women workers has continued to widen. In 1956, women working full time and year-round earned $63 for every $100 earned by men. In 1973 the figure had dropped to $57 for women for every $100 earned by men.[2] This growing earnings gap suggests that the presence of laws against discrimination will not guarantee its elimination. Laws must be enforced, and it is crucial for women who are, or may be, members of the work force to know their rights under fair employment laws and to be prepared to pursue the enforcement of these rights.

The ability to identify discriminatory treatment is important for a woman employee's self-protection and assertion of her rights to equal employment opportunities. It is easiest to identify discrimination when it is blatant: An employer tells a woman that she will not be hired because she is a woman or because she is a minority person. As employers have learned about the law, this type of discrimination has become less frequent.

A second type of discrimination takes the form of unequal treatment: An employer has one set of rules or standards for male employees and another for female employees. Or the employer has the same set of rules but applies it differently to men and women.

The third type of discrimination may be the most difficult to recognize and is perhaps the most frequent as employers learn the rules of fair employment: The employer applies a rule or standard equally to both men and women, but the rule or standard automatically excludes more of one sex than the other. For example, an employer might require all workers to be over a certain height, such as five feet eight inches. The employer would claim that this requirement is applied equally to men and women and is therefore not discriminatory. However, such a standard automatically excludes more

women than men (and more Asian or Spanish-speaking persons than others). Application of such a requirement is illegal, even if the employer does not intend to discriminate, unless the employer can show a valid business reason for the requirement. Proving a valid business reason is difficult under the law.

The principal laws and executive orders that govern employment practices affecting women are (1) the Wisconsin Fair Employment Act; (2) Title VII of the federal Civil Rights Act of 1964 (as amended in 1972); (3) the federal Equal Pay Act of 1963 (as amended in 1972); (4) Wisconsin Executive Order 9 (1975); (5) Federal Executive Order 11246 (1965) (as amended by Executive Order 11375 in 1967); (6) Federal Executive Order 11478 (1969); (7) the federal Age Discrimination Act of 1967.

Women who believe they have been discriminated against because of their sex, race, religion, national origin, age, or handicap in matters of employment may bring formal charges. Forms for filing discrimination complaints against employers, unions, employment agencies, or licensing agencies under either Title VII or the Wisconsin Fair Employment Act can be obtained from the Equal Rights Division, Department of Industry, Labor and Human Relations (DILHR), whose address is in the Directory of Services at the back of this handbook. The forms can also be obtained from DILHR's local Job Service offices.

The forms can be used to charge discrimination on the basis of race, color, religion, sex, national origin, handicap, or age. Organizations as well as individuals may file complaints. Complaints may also be filed with the federal Equal Employment Opportunity Commission (EEOC) or with the various federal agencies (mentioned below) responsible for enforcing other antidiscrimination laws. The addresses of these offices are also in the Directory of Services at the back of this handbook.

Virtually all Wisconsin employees are protected by one or more state or federal antidiscrimination laws. Because of differences in the coverage of the laws, an individual who thinks s/he has been illegally discriminated against should not rely on one agency to file her/his complaint with other agencies but should file complaints with all agencies under all applicable laws. A woman who feels she has been the object of discrimination, but is not sure exactly why, should file a complaint under all possible and relevant grounds (for example, sex, race, and age).

## DISCRIMINATION PROHIBITED BY TITLE VII

Under Title VII of the federal Civil Rights Act[3] an employer may not fail or refuse to hire or may not discharge any person or discriminate against any person with respect to pay, terms, conditions or privileges of employment because of the person's race, color, religion, sex, or national origin (covered classifications). An employer is prohibited from limiting, segregating, or classifying employees in any way that would deprive an individual of employment opportunities or that would adversely affect the employee's status because of a covered classification.

An employer may not fail to hire a woman because of her marital or family status if the employer hires men of the same marital or family status. An employer may not exclude women from employment opportunities due to sex stereotyping. A rule that no women will be hired for a job requiring weight-lifting ability is illegal. The employer must test individual job applicants to determine which individuals, male or female, have weight-lifting ability necessary to perform the job.

Forbidden conditions of employment include sex-differentiated treatment in wage scales and vacation time; promotional policies; seniority lists; classification of job duties; overtime work, pay, and hours; medical, life, and accident insurance coverage; hospital coverage; and retirement privileges. Training programs must be equally available to both sexes.

Title VII covers private, federal, state, and municipal employers of 15 or more workers; labor organizations involved in industries affecting interstate commerce; employment agencies; the Federal-State Employment and Training Administration system; and public and private educational institutions. Religious institutions are excluded from the coverage of Title VII with respect to employment of persons of a particular religion but are not exempt from the prohibition of discrimination based on sex, race, color, and national origin. Private-membership clubs are not prohibited from discriminating under Title VII.

Employment agencies are prohibited from failing or refusing to hire an individual on the basis of race, color, sex, religion, or national origin. It is also unlawful for an employment agency to classify or fail to refer for employment or otherwise discriminate against any individual on the basis of race, color, religion, sex, or national origin and to stereotype jobs as male or female jobs.

Labor unions are prohibited from expelling or excluding from membership or otherwise discriminating against any individual on the basis of race, color, religion, sex, or national origin and from limiting, segregating, failing to refer for employment, or adversely affecting any person's employment status and opportunities because of the person's sex, religion, race, color, or national origin. Labor unions are forbidden to cause or attempt to cause an employer to discriminate against an individual.

Other activities prohibited under Title VII include discriminatory admission to or employment in an apprenticeship or training program by an employer or labor organization and publishing notices or advertisements (including help-wanted ads and recruiting literature) that indicates discriminatory preferences, limitations, or specifications.

Preference by sex is not considered discrimination if sex is a bona fide occupational qualification (BFOQ) where all of the members of one sex are physically incapable of performing the essential duties required by a job, or where the essence of the employer's business operation would be undermined if employees were not hired exclusively from one sex. The EEOC, in its guidelines, has defined BFOQ very narrowly (male or female model, actress, or actor). However, the courts are still in the process of developing their own definitions on BFOQ.

Employment applications that inquire about the sex or marital status of employees are not considered discriminatory unless it can be shown that the information has been used in a discriminatory manner. Discrimination based on marital status is not a sex-based violation so long as the requirement or practice applies equally to men and women. However, the requirement or practice is discriminatory if marital status has no relation to job requirements and is used to disqualify women and not men.

Title VII prohibits employers from imposing sexual advances on employees as a condition of employment. A male supervisor who hires, fires, or promotes a female employee on the basis of her cooperation with his sexual overtures is violating federal fair employment laws.

No private or public employer can legally terminate a woman's employment because of her pregnancy. Federal guidelines to Title VII prohibit employers from treating pregnancy differently from any other temporary disability for job-related purposes. The U.S. Supreme Court is expected to rule soon on whether these guidelines are valid.

## DISCRIMINATION PROHIBITED BY THE WISCONSIN FAIR EMPLOYMENT ACT

The Wisconsin Fair Employment Act[4] offers essentially the same protections and coverage as Title VII, with the following important differences:

1. Wisconsin law covers all employers regardless of the number of employees.
2. Age and handicap are additional types of discrimination prohibited under the Wisconsin law.
3. Government employees, except federal employees, are covered by the Wisconsin law.

A pregnant employee is also protected from discharge under the Wisconsin law, as she is under Title VII. The Wisconsin Supreme Court has declared that an employer must treat pregnancy and normal childbirth the same as other temporary disabilities for purposes of paying sick benefits unless the employer can prove that payment of such benefits would require "a substantial increase in expense."[5] Pregnancy and employment are discussed in greater detail in Chapter 3, Parental Rights and Responsibilities.

The Wisconsin Supreme Court has also ruled that a person who is discriminated against is entitled to a finding of discrimination even if the discrimination is later eliminated by the employer or labor union.[6]

## COMPLAINT PROCEDURE UNDER TITLE VII AND WISCONSIN LAW

In order to enforce any of these laws, a person (complainant or charging party) must file a complaint or charge with DILHR or EEOC. Because Wisconsin has a fair employment law, the federal EEOC is required by law to give DILHR the first opportunity to resolve the problem. DILHR will

investigate the complaint, attempt to conciliate (reach a settlement satisfactory to both sides) if it is likely that discrimination occurred, and if a settlement is not reached, will hold a hearing in order to make a final decision. This process may be lengthy because there may be a backlog of cases. The individual complainant is informed when the problem is turned over to DILHR and s/he has the right to return to the EEOC after 60 days from the date the charge was filed if s/he is not satisfied with the action of the state agency.

After the EEOC investigates the charge, it tries to end the discrimination by conciliation. If it is unable to bring about an acceptable conciliation, EEOC can file a civil lawsuit against the employer named in the charge, provided the employer is not a government agency or political subdivision. Actions against any government organization must be referred to the U.S. Department of Justice. The Civil Service Commission handles complaints by federal employees regarding sex discrimination.

After a complainant has given DILHR 60 days and EEOC 180 days to bring about a settlement, s/he can request a right-to-sue letter and sue the employer or other alleged discriminator in federal district court. EEOC will not serve as the lawyer for the complainant unless it has initiated the court action. There is often a large backlog of cases filed with both DILHR and EEOC, and the waiting period may be several months on the state level and longer on the federal level before action on a complaint can begin. However, a successful complainant may receive an award of back pay, attorneys' fees, reinstatement, or other appropriate remedy (such as a change in the employer's discriminatory policy) either from DILHR, the federal courts, or EEOC.

Time limits for filing complaints under the various laws differ. It has not yet been determined what time limit there may be for filing charges under the Wisconsin law, but charges must be filed with EEOC within 180 days of the alleged act of discrimination for coverage under Title VII unless a complaint has already been filed with DILHR, in which case the charge must be filed within 300 days of the alleged discriminatory act or within 30 days of termination of DILHR's proceedings, whichever is earlier. Continuing violations of the laws, such as unequal pay or continuing failure to promote, are not affected by these time limits as long as they exist, but once the person is given equal pay or promoted, s/he must file within 180 days in order to file for any back pay that may be due.

A woman who feels she has been discriminated against on the job should consider carefully the consequences of filing a complaint. Her employer will be notified if she files a Title VII charge. Her identity is supposed to remain unknown to her employer if she files a conditions of employment complaint with DILHR,' but DILHR's success with the administration of this protection is not yet guaranteed. A woman who has a job must be prepared, possibly, for employer retaliation if she files a complaint. Such retaliation may be subtle, coming in the form of hostile looks, changed job assignment, or closer supervision, or the retaliation may take a more obvious form such as discharge. An employer or employment agency is prohibited under both

federal and state law from discriminating against any individual who has filed a complaint, testified, or assisted in any proceeding regarding unlawful employment practices, or who has opposed illegal employment practices. However, agency backlogs may mean long delays in the processing of a complaint. It is often a matter of years before any actual remedy is gained. And a woman with a job, especially when jobs are scarce, must realize that a complaint about a discriminatory condition of employment does involve some risk.

## THE FEDERAL EQUAL PAY ACT

The Equal Pay Act of 1963 amends the Fair Labor Standards Act of 1938 and covers all those except public employees who must receive at least the minimum wage. (The U.S. Supreme Court, in 1976, determined that public employees are not covered under the Fair Labor Standards Act.[8]) The authority of the Equal Pay Act is limited to the requirement that the same wages and other benefits be paid to men and women doing substantially, not identically, the same work. Complaints of violations of the Equal Pay Act should be filed with the local office of the Wage and Hour Division, U.S. Department of Labor, whose address is in the Directory of Services at the back of this handbook. The Wage and Hour Division will investigate a complaint and can request an employer to comply in the future, as well as requesting her or him to provide up to two years back pay for the wage differential suffered. Failure to comply voluntarily makes the employer liable to a lawsuit by the division or the individual, in which the employer may be ordered to provide back pay, liquidated damages (double back pay in the case of a willful violation), lawyers' fees, and court costs if a violation is found.

Confidentiality of a complaint filed under the Equal Pay Act is assured, unlike a complaint filed under Title VII, which does not allow the complainant to be anonymous.

## AGE DISCRIMINATION

The federal Age Discrimination in Employment Act of 1967, as amended, prohibits employers, employment agencies, and labor unions from discriminating on the basis of age against any person between the ages of 40 and 65 in hiring, firing, promotion, or other aspects of employment.

The law applies to employers of 20 or more employees, employment agencies, and labor unions of more than 25 members. It includes public employees. The law does not apply to situations in which age is a bona fide occupational qualification—such as modeling junior miss fashions—nor to bona fide seniority systems and benefit plans.

The law is enforced by the Wage and Hour Division of the U.S. Department of Labor. A complainant's identity is never revealed without that person's knowledge and consent. The employer cannot, under the act, fire or otherwise discriminate against a complainant who has started proceedings under the law.

To file a complaint, write very concrete details of the experience of discrimination within 180 days of the time it occurred and deliver or send it to the Wage and Hour Division. If a complaint has already been filed with the Equal Rights Division of DILHR, the complaint, in order to be covered by the federal law, must also be filed with the federal Wage and Hour Division within 300 days of the alleged violation or within 30 days of the end of DILHR's proceedings, whichever is earlier.

## EMPLOYMENT DISCRIMINATION IN EDUCATION

Wisconsin law specifically prohibits discrimination against teachers and school administrators.[9] A person who feels that s/he has been discriminated against because of sex, race, nationality, or political or religious affiliation in applying for a teaching or administrative job or in being given a particular assignment or reassignment may file a complaint with the Department of Public Instruction (DPI). DPI is authorized to investigate complaints to determine whether there is probable cause to hold a hearing on the matter and to order relief for complainants if discrimination is found. There is a criminal penalty for illegal discrimination against teachers ($25 to $50 fine or 5 to 30 days in jail).

Discrimination against handicapped teachers is also forbidden under Wisconsin law.[10] However, no procedure for DPI enforcement of the law is prescribed and no criminal penalty may be imposed for a violation. A person who believes s/he has been discriminated against because of handicap should file a complaint with DPI.

Title IX of the Higher Education Act of 1972 is a federal law that forbids sex discrimination in student services or employment opportunities in local school systems and institutions of higher education that receive federal aid. The law prohibits sex discrimination in hiring, upgrading, consideration for awards of tenure, demotions, transfer, layoff, termination, application of nepotism policies, or the right of return from layoffs and rehiring. Schools are not permitted to discriminate in giving higher pay because of sex, nor can they classify jobs as male or female or maintain separate lines of progression, seniority systems, or career ladders on the basis of sex. The federal agency granting aid and the Office on Civil Rights, HEW, are responsible for enforcement. An individual may notify the nearest HEW office concerning alleged sex discrimination. However, there is no procedure for filing a complaint or receiving a remedy as an individual under Title IX.

## FEDERAL AND STATE EXECUTIVE ORDERS

The enforcement of the federal executive orders (Executive Order 11246, as amended by Executive Order 11375 and Revised Order 4) is handled primarily by the Office of Federal Contract Compliance (OFCC), U.S. Department of Labor. It is responsible for ensuring that employers who have contracted to do business with the federal government do not discriminate in employment. Companies with large government contracts

must submit an affirmative action plan when they submit their bid for a project. Failure to live up to this plan can cause delay or even revocation of the contract.

To register a discrimination complaint about a federally funded project, write to the agency involved in the funding. For institutions of higher learning, the enforcement has been turned over to the Office on Civil Rights, HEW. This office investigates class action (litigation on behalf of an entire class of workers, not just an individual) and pattern complaints (complaints of discrimination based not on a particular action or policy but on hiring and promotional data that reflect a pattern of bias), and turns individual complaints over to EEOC.

Executive Order 11478 reaffirmed and extended the federal government's policy of providing equal employment opportunities and nondiscrimination because of sex, race, color, religion, or national origin to federal employees. Federal departments and agencies are required to establish and maintain an affirmative action plan, including the provision of sufficient resources to administer the program in an effective manner. The Civil Service Commission is authorized to process all complaints of discrimination in federal employment. The commission may attempt to resolve complaints informally, investigate them, or provide a hearing. Back pay, remedial promotions, and other remedies are available to successful complainants.

At the request of the Wisconsin Commission on the Status of Women, in 1972 Governor Lucey issued Executive Order 39, mandating an affirmative action plan and requiring implementation throughout state employment. The order created the Affirmative Action Office in the State Bureau of Personnel, to develop guidelines and procedures for the several state departments to aid in establishing goals and timetables, to report employment status of women and minorities, and to review periodically the progress of these groups in state employment.

The Affirmative Action Office was underfunded and understaffed, and sufficient changes in the number and employment levels of minorities and women had not occurred by the 1975 legislative session. Therefore, a group of some 40 citizens from around the state, representative of all the affected populations, formed an ad hoc committee to recommend measures that would strengthen Wisconsin's Affirmative Action Plan. As a result, Executive Order 9 was issued in April 1975 as a revision of the 1972 Executive Order 39. It ordered "an Affirmative Action Program to correct deficiencies and to increase materially the utilization of minorities, women, and handicapped persons in all segments of the state work force."

Executive Order 9 placed the Affirmative Action Office directly under the secretary of administration, enabled the application of sanctions under penalties for noncompliance, improved the reporting procedure, and created the Affirmative Action Executive Commission to evaluate the program and advise the governor. That executive commission of 15 people consists of a citizen majority from the affected groups and 6 key state officials.

## LITIGATION

Women have gone to court to fight sex-based discrimination, and have done so in an increasingly organized fashion over the last five years. Individual lawsuits are clearly one means of developing the law, but they do not accomplish rapid change. A class action (lawsuit in which the same complaint of a large and similar group of people is litigated together) is a useful tool because the coverage and impact is greater than in an individual suit. Relief granted to the class is much more effective. However, recent decisions have made it more difficult to bring such suits.

A lawsuit of any kind can take years from start to finish, and the cost often is phenomenal, even when attorneys contribute their services. But the more serious disadvantage is that of jurisdictional complexities. Only a decision by the U.S. Supreme Court binds the entire nation. State court decisions are the law within that state only; federal court decisions hold for that particular district. (A decision in one jurisdiction is, of course, instructive although not binding in another.)

One must not assume that attitudes and practices will immediately change just because a court renders a decision. School desegregation is a glaring example of the slow pace of social change in the wake of litigation, despite decisions by the U.S. Supreme Court and subsequent implementing statutes and enforcement actions.

Significant cases have been won, however, in federal and state courts by a variety of individuals, as well as by the National Association of Women Lawyers, the National Organization for Women, Women's Equity Action League, and Human Rights for Women. They have taken on such goliaths as American Telephone and Telegraph (AT&T), the American Newspaper Association, Colgate-Palmolive, Southern Pacific Railways, and the federal government itself. The cases mentioned here are merely illustrative of the many gains made. For example, in a decision interpreting Title VII of the 1964 Civil Rights Act, *Weeks* v. *Southern Bell Tel. & Tel. Co.* (1969),[11] the court said that unless the employer had a factual reason to believe that "all or substantially all" women could not safely and efficiently perform a job (in that case lift a certain weight) s/he could not lawfully refuse to hire qualified women.

Two years later the U.S. Supreme Court ruled in another Title VII case, *Griggs* v. *Duke Power Co.* (1971),[12] that tests for employment which have a discriminatory impact on a protected group must be job related, so that tests are a "reasonable measure of job performance." The impact of these decisions was to clear the way for more jobs for qualified women who theretofore had been unable to compete for positions. Recently, under both Title VII and the 1963 Equal Pay Act, women have won huge back pay awards against Corning Glass, AT&T, and nine steel companies.

## PROTECTIVE LABOR LAWS

All of Wisconsin's so-called protective labor laws, which for 60 years afforded special employment requirements for women and minors, now have

been repealed.[13] New administrative rules promulgated by DILHR, *Wis. Admin. Code* Ind 74, take effect April 1, 1977. They extend the right to overtime pay to workers of both sexes. Meal periods are mandatory for minors and recommended for all adult workers. In *Wis. Admin. Code* Ind 72, the department several years ago extended minimum wage protection to cover male as well as female employees.

## WORKERS' COMPENSATION AND UNEMPLOYMENT BENEFITS

Two state programs of which women workers should be aware are Workers' Compensation, available to people injured on the job or to people who contract an occupational disease, and Unemployment Compensation, a weekly benefit for a limited time for those involuntarily unemployed. The individual must apply for these. For information on eligibility and procedure for claiming benefits, contact the nearest state DILHR Job Service office.

Until a court challenge in 1973 and the repeal of a long-standing statute, women were unable to receive unemployment compensation ten weeks prior to and four weeks following childbirth, regardless of the reason for their unemployment. Now a pregnant woman is entitled to the same treatment as any other applicant for unemployment compensation. As long as she is physically able to work and available for work, a pregnant woman who is unemployed is entitled to benefits. As is the case with any other physical disability, in order to prove eligibility for benefits she may be required to furnish a physician's statement that she is able to work.

The Wisconsin Supreme Court recently ruled that an employee may receive Workers' Compensation if s/he can prove that unusual work stress caused mental disability.[14]

## OCCUPATIONAL SAFETY AND HEALTH

Under the Occupational Safety and Health Act the federal government has established mandatory standards such as fire safety regulations and various protections against injury, odors, and toxic substances. A worker may request an investigation by the Occupational Safety and Health Administration (OSHA) if s/he believes that a violation of a job safety or health standard exists in the workplace. OSHA will determine whether the complaint merits investigation and, if so, will inspect and enforce correction of any deficiency.

## PENSIONS AND RETIREMENT—TITLE IX

Approximately nine out of ten workers are covered by Social Security, which is discussed in Chapter 8, "Taxes and Social Security." In addition, more than 30 million of these workers are a part of private pension plans of various kinds: controlled by the employer, negotiated with unions in collective bargaining agreements, contributory, and noncontributory.

Because there are so many variations in the terms of pension plans, it is most important to find out precisely what is provided. How long must one be employed before becoming eligible for retirement benefits? At what age does

one become eligible to enroll in the plan? What happens to the pension if the job is abolished? Are there survivors' benefits? Such questions should be asked and viewed seriously at the time of employment.

Private pension plans have long been under attack in Congress because they have not been regulated beyond requirements of minimum funding and tax-disclosure laws. This lack of accountability has enabled large corporations to exercise almost unlimited control over fund assets. The complexity of employers' pension regulations has resulted in the failure of many employees to qualify for benefits.

The assets of private pension plans have tripled to an excess of $150 billion and are expected to reach $280 billion by 1980. Despite these assets, however, only one out of ten covered employees receives a pension, according to a major congressional study. Approximately 20 million workers have no pension at all. After 13 years of debate on pension reform and months of hearings, legislation was passed in February 1974 that established minimum vesting, funding, fiduciary standards, and termination benefits for private pension plans.[15]

Included in the legislation, and of great importance to the homemaker, is the provision that survivors' benefits are mandatory unless waived in writing by the employee. The lack of survivors' benefits has been so extensive that only 2 percent of the survivors now receive benefits. Since women usually outlive their husbands, this is one reason why six out of ten older women have incomes below the poverty level. Often no survivor was named, either through oversight or because the husband did not want to receive reduced benefits while he lived.

The new pension laws also contain a provision that, to qualify for survivors' benefits, a pension participant and spouse must have been married for at least five years before the pension goes into effect or for five years before the death of the participant.

Employee pension plans often pay women lower periodic benefits than they pay men. This practice is defended on the basis of actuarial tables which show that women have a longer average life-span than men. Employers and insurance companies argue that all average employees get the same total amount. This practice suggests another reason why many older women live in poverty.

At the present time the new pension legislation does not require employers to pay equal periodic pension benefits to men and women. EEOC guidelines prohibit paying unequal periodic benefits to men and women or averaging costs by sex or race. Averaging, which attributes to the individual the experience of the group whether or not the individual conforms to the group behavior, violates the very basis of Title VII.

The U.S. Department of Labor currently interprets the Equal Pay Act, Title IX, and Executive Order 11246 to require only that employers make equal contributions to a retirement plan for similarly situated employees. The federal Equal Employment Opportunities Coordinating Council recently recommended that the new pension law be amended to require employers to pay equal periodic benefits to men and women retiring after January 1, 1980.

## UNION MEMBERSHIP

In 1974 the national Coalition of Labor Union Women (CLUW) was formed by women from 58 unions to improve the conditions of working women by organizing more women into unions, to encourage fuller participation of women in union decision making, and to increase the concern of women with union-management contracts and the law. Employment facts bear out CLUW's contention that union membership is one of the surest guarantees of adequate income and decent working conditions for women. While unions are by no means immune from traditional attitudes toward women, the lot of union women is markedly better than that of other employed women. To date, only about 20 percent of American women in the work force belong to unions.

The National Labor Relations Act (NLRA), as amended by the Labor-Management Relations Act, provides employees the right to form, join, or assist labor unions and to bargain collectively, through representatives of their own choosing, on wages, hours, and other terms of employment. The employee is also guaranteed the right to refrain from membership or participation in a union except where such membership is a requirement of employment. Where union membership is a condition of employment, one does not have to be a member of the union to qualify for employment. After employment, the union may require that a person pay dues (fair share), but it cannot require union membership as a condition of employment.

Certain labor practices are labeled unfair and prohibited by the NLRA. Examples of rights protected include the following: forming or attempting to form a union among employees of a company, joining a union whether or not it is recognized by the employer, assisting a union to organize, striking to secure better working conditions, and refraining from activity on behalf of a union. Unions as well as employers are prohibited from committing unfair labor practices. Unions are prohibited from charging excessive dues or fees and from punishing a worker for not participating in a secondary boycott. Under the NLRA a union also has a duty of fair representation, which obligates it to represent its members in a nondiscriminatory manner in such activities as contract negotiations and grievance procedures. A union that does not comply with this duty risks denial or rescission of its certification as a union.

Employees not covered by these labor laws include agricultural laborers, private household workers, independent contractors, supervisors, persons subject to the Railway Labor Act, and public employees.

The Labor-Management Reporting and Disclosure Act provides that all union members have equal rights in nominating candidates for union office, voting in union elections and referendums, and participating in membership meetings. Union fees and dues may be raised and assessments imposed only by a majority vote by secret ballot of members in good standing. A copy of the collective bargaining agreement must be available for inspection by all those covered by the agreement.

# 6 EDUCATION

Discrimination in education is one of the most pervasive and complex problems women face. Overtly sexist textbooks inculcate children with offensive stereotyping from their earliest school experiences throughout their educational careers. Classroom offerings such as home economics and industrial trade courses have often been available only to students of the "appropriate" sex. The staff, facilities, and financing available for extracurricular athletic activities disproportionately support boys' programs. In short, female students in Wisconsin, as elsewhere in the United States, lack educational opportunities equal to those afforded male students, and in many ways males are also disadvantaged by sex discrimination.

In addition, female educators are discriminated against on the job in terms of salaries, fringe benefits, promotions, and representation in professional organizations. In education administration, for example, women's representation has deteriorated over the years; today there is not a single woman school superintendent anywhere in Wisconsin.

Many teachers have been extremely active in fighting sexist employment practices such as dismissal for pregnancy and unequal retirement benefits. These employment problems are considered in Chapter 5. This chapter discusses only the problems of curricular discrimination and unequal educational opportunities for female students.

## LEGISLATION RELATING TO EQUAL EDUCATIONAL OPPORTUNITIES

As a result of concern and action by both local and national groups, legislation intended to ameliorate sex discrimination in education has been enacted by the U.S. Congress and by the Wisconsin Legislature.

In 1972 Congress enacted comprehensive legislation known as the Educational Amendments Act of 1972.[1] The most important and controversial of these amendments is the now famous Title IX, a broadly worded provision that prohibits discrimination on the basis of sex in educational institutions that receive federal funding. The key provision of Title IX reads:

> No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . .

Although the strident opposition to strict regulations and the long delay in enacting regulations to carry out the spirit of Title IX were frustrating to proponents, final regulations were at last published in the *Federal Register* in June 1975 and became effective on July 21, 1975. Title IX is a comprehensive piece of legislation that has significant implications for recruiting, admissions, financial aid, student rules and regulations, housing rules, health care and insurance benefits, student employment, athletics and other extracurricular

activities, course content, single-sex courses, and women's studies programs. The Office on Civil Rights, HEW, is charged with enforcement of Title IX and answers questions about its meaning and scope on a case-by-case basis. The impact of Title IX in many of these areas is explored below. At the outset, it should be noted that Title IX is limited in its applicability, since preschools, parochial schools, the YMCA and YWCA, Boy Scouts, Girl Scouts, Camp Fire Girls, social fraternities and sororities, military academies, private undergraduate colleges, and traditionally single-sex public undergraduate colleges are exempted from its equal-admissions requirements. Exempted groups and schools which do admit students of both sexes must comply with other Title IX requirements, however. Despite the exemptions and limitations, it is generally believed that Title IX will bring significant change to the nation's schools.

A newer federal law that may eliminate some of the problems left by Title IX is the Equal Educational Opportunities Act of 1974.[2] This act states that "all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex or national origin." Feminists should carefully scrutinize the administrative rule-making process by which interpretive and enforcement mechanisms are developed to make sure that implementation of the Equal Educational Opportunities Act is not delayed, as was implementation of Title IX.

Other federal laws prohibiting sex discrimination in education include the Emergency School Aid Act, prohibiting sex discrimination in any educational program or activity receiving federal financial assistance;[3] Title IV of the 1964 Civil Rights Act, which prohibits sex discrimination in assignment to a school;[4] Titles VII and VIII of the Public Health Service Act, which prohibit sex discrimination in admission to federally funded health training programs;[5] and Title IV of the Educational Amendments of 1972, which prohibits sex discrimination by lenders who use the Student Loan Marketing Association.[6]

On the state level, the Wisconsin Legislature in 1975 enacted comprehensive provisions similar in scope to Title IX as part of the state Equal Rights Act.[7] They read:

> *101.225 DISCRIMINATION IN EDUCATION PROHIBITED.* No child may be excluded from or discriminated against in admission to any public school or in obtaining the advantages, privileges and courses of study of such public school on account of sex, race, religion or national origin.
>
> *118.13 PUPIL DISCRIMINATION PROHIBITED.* No person may be excluded from or discriminated against in admission to any public school or in obtaining the advantages, privileges and courses of study of such public school on account of sex, race, religion or national origin. Any member of a school board who votes to exclude from any public school any child on the basis of sex, race, religion or national origin may be fined not more than $100 or imprisoned not less than 30 days nor more than 6 months or both. The

superintendent may promulgate rules necessary to carry out the purposes of this section.

This law, which applied, as of October 30, 1975, to all Wisconsin public elementary and secondary schools, is administered by DPI and DILHR. No administrative rules have been promulgated for the administration of the law, and no complaints under it have been processed as of July 1976.

The federal and state legislation has affected many facets of the educational process despite the difficulties in administering the new laws. Many conscientious educators are beginning to correct discriminatory practices, even in the absence of specific judicial or legislative directives. DPI now requires a course in human relations, including a module on sex discrimination, for teacher certification.[8]

Another positive development was the establishment of DPI's 13-member Task Force on Sex Role Stereotyping in Education, created by the state superintendent of public instruction in December 1974 as part of the Freedom for Individual Development project. The task force prepared a report, available from the superintendent's office, that delineates the problems of sexist educational practices and recommends corrective action.

## CURRICULUM

Textbook bias is a pervasive problem with which feminists have long been concerned. However, the final regulations for Title IX do not prohibit the use of discriminatory texts; in fact, the regulations specifically provide that they have no effect on the choice of curricular materials. The rationale for this position is that "the imposition of restrictions in this area would inevitably limit communication and would thrust. . . [HEW] into the role of Federal censor."[9] As of this writing, it is not clear whether the state will similarly avoid dealing with textbook bias. A serious complication is the possible conflict with the freedom of speech which is guaranteed by the First Amendment to the U.S. Constitution.

Title IX prohibits the once-prevalent practice of sex-segregated physical education and health education classes. Additionally, it prevents a school district from requiring that boys take shop and girls take home economics courses, from excluding boys from home economics or girls from shop courses, and from sex-segregating into such courses as "bachelor cooking" or "powder-puff mechanics." Sex discrimination in counseling, testing, and career guidance is also prohibited.

Although an educational institution which admits both males and females may not discriminate, many institutions are exempt from Title IX's admission requirements and thus are free to discriminate in admissions policies. And recently, a Pennsylvania court held that, even in a public school system subject to Title IX, it is constitutionally permissible to maintain two single-sex high schools in which enrollment is voluntary and the educational opportunities offered to girls and boys are essentially equal.[10] "Separate but equal," while it constitutes racial discrimination in education, appears not to constitute sex discrimination in education. Our state equal education law may

change this situation for Wisconsin schools, since there is a tradition of integration of the sexes in Wisconsin education. In 1973 the state legislature removed from the statutes authorization for the establishment of separate trade schools for boys and girls."

## ATHLETICS

Perhaps the most controversial and complicated area in the provision of equal educational opportunity is that of athletics. The question of what equal athletic opportunity involves is difficult to answer. For purposes of enforcing Title IX, many factors will be considered in determining whether discrimination has occurred, including whether the sports selected reflect the interests and abilities of both sexes, provision of equipment and supplies, game and practice schedules, travel and per diem allowances, arrangements for coaches and academic tutors, locker rooms and other facilities, medical and training services, housing and dining facilities, and publicity.[12] Equal opportunities—but not necessarily equal expenditures—are required in each category.

According to Title IX regulations, separate but equal sports teams are permitted for "contact" sports—"boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact."[13] Women may try out for men's teams in noncontact sports if their athletic opportunities have been limited in the past. However, a school may preclude men or women from participating on teams for the other sex if athletic opportunities have not been limited for them previously, even in noncontact sports.[14]

Title IX also requires schools which offer athletic scholarships to male students to provide opportunities for such assistance to female students in proportion to the number of students of each sex participating in the school's athletic program. As a result, a number of institutions of higher education in Wisconsin, including the University of Wisconsin, have begun to offer athletic scholarships to women.

Confusion on the issue of equal athletic opportunities regardless of sex has been compounded by the obvious advantages enjoyed in some sports by men, who tend to be taller and heavier than women. Perhaps a better solution than the separate but equal opportunities for teams divided on the basis of sex mandated by the Title IX regulations would be a requirement that in any sport in which height or weight gave an advantage, competition should be divided into 2 or 3 groups according to *size*. Boxing has traditionally been divided into featherweight, lightweight, and heavyweight, and similar systems of classification could usefully be extended to other sports, thereby providing meaningful opportunities to compete not only for women but for smaller men.

Four cases protesting discrimination in high school interscholastic athletics have been filed in the federal court in the Eastern District of Wisconsin; in two, temporary restraining orders have been issued that permit women to try out for places on men's teams. *Kelly* v. *Wisconsin Interscholastic Athletic Association et al.* and *Walsh* v. *Wisconsin*

*Interscholastic Athletic Association et al.* were filed in 1973 on the issues of girls' participation on the boys' swimming and tennis teams; they are awaiting decision in Federal Judge John W. Reynolds' court. In April 1975, Federal Judge Myron L. Gordon issued temporary restraining orders in *Leffel* v. *Wisconsin Interscholastic Athletic Association et al.* and *Pranke* v. *Wisconsin Interscholastic Athletic Association et al.*, thus permitting two female high school students to try out for the boys' baseball team at their school, which offered no girls' team.

## GROOMING AND DRESS CODES

At this point it remains unclear whether grooming and dress codes with different standards for males and females—such as prohibiting girls from wearing pants or requiring boys to keep their hair short—will be permissible under Title IX or the new state legislation. The basic question is whether the existence of such differing standards constitutes sex discrimination. In one recent case, a Mississippi federal court held that a hair length requirement for male high school students did not constitute sex discrimination under the Emergency School Aid Act. The judge said, "If the . . . regulation . . . proposes to erase all outside physical distinctions between the sexes, it aims at a ridiculous result, one of stereotyping both sexes into one, with little relation to the purpose of federal funding."[18] If this rationale is accepted with regard to the implementation of Title IX and the state equal education law, virtually any regulation relating to student appearance will probably be valid. Some people have challenged dress and grooming codes on the basis that the differential treatment of males and females violates the Fourteenth Amendment's equal protection clause. The federal circuit court for Wisconsin upheld such an argument, ruling that the right to groom oneself as one chooses is constitutionally protected.[19] In general, Wisconsin schools have relaxed dress codes over the past several years so that both male and female students are allowed more flexibility and individual expression in this area. However, the issue of hair length and facial hair is still controversial in many school districts.

## PREGNANT STUDENTS

The purpose of Chapter 89, *Laws of Wisconsin* (1973), which recodified state law having to do with special needs of handicapped children, was to ensure that children with exceptional needs had the opportunity to receive special education suited to individual needs at public expense. Included in the definition of eligible children under this law are pregnant girls for the period of pregnancy and for two months after termination of pregnancy. To be eligible for special state-aided programs for pregnant school girls, the girl must not have graduated from high school and both she and her parent or guardian must consent to her placement in special education.

Another statute prohibits school boards, school-board members, multidisciplinary teams, and persons employed by a school board or

cooperative educational service agency from compelling a pregnant girl to withdraw from her regular educational program.[17]

Title IX guidelines prohibit schools from denying the student the opportunity to participate in any class or extracurricular activity because of "pregnancy, childbirth, false pregnancy, miscarriage, abortion or recovery therefrom." The guidelines do not prohibit special classes or programs for pregnant students. They do state that no such student is required to enroll or to be tutored at home. Other prohibited forms of discrimination are (1) excluding pregnant students for any mandatory period, (2) requiring a pregnant student to have a doctor's certificate to leave or remain in school if not required of other students for other temporary disabilities, (3) requiring notification of date of childbirth if not requiring other students to notify the school for planned absence, and (4) treating pregnancy differently according to marital status.[18]

## ENFORCEMENT AND COMPLAINT PROCEDURES

The problems of enforcing legislation and processing complaints have been overwhelming at both the state and national level. Nationally, Title IX requires that individual institutions establish internal grievance procedures but specifies no requirements for such internal grievance mechanisms and sets no time limitations on the process. Consequently, administrative delays caused by the snail-paced workings of a bureaucracy facing no pressure may effectively cut complainants off from internal resolution of their problems. The Office on Civil Rights will investigate complaints whether or not the institution has processed them. A long backlog and serious understaffing handicap the agency in its efforts, however.

Originally, Title IX regulations provided that the HEW could investigate complaints on a discretionary basis and was not obligated to process any particular complaint. Because of serious and sustained criticism of this strategy, HEW changed its policy and now will investigate all complaints received.[19] In June 1976 a federal district court issued a ruling which requires HEW to take initial action on each complaint within 90 days after its receipt by the agency.[20] If the initial determination is that a violation of Title IX has occurred, HEW has an additional 90 days to negotiate corrective action. If the offending institution will not comply voluntarily, HEW must take steps to enforce the law within an additional 30 days. This means that the issue should be resolved within 210 days after the filing of a complaint. If an emergency situation exists, faster action is required. While this decision applies only regionally, HEW officials have indicated that they plan to use the court's timetable as a model throughout the country.

On the state level, as of August 1976, neither DPI nor DILHR had moved to promulgate rules for the implementation of the equal education law. At the time of printing, DPI had received no complaints under the new law; DILHR had received complaints but was holding them in abeyance, pending the establishment of investigative procedures. Thus, the state law, after more than a year, remained completely unused and unusable because of the absence of administrative guidelines.

Because the procedure for dealing with complaints at both the state and federal level is in flux, potential complainants should write to the agencies involved for specific information as to how to proceed. (Addresses are listed in the Directory of Services at the back of this handbook.) No fee is charged for filing a complaint; a letter explaining the circumstances or perhaps a simple form should be sufficient to initiate the process.

## CONTINUING EDUCATION AND WOMEN'S STUDIES

Since the early 1960s, colleges and universities have gradually accommodated the growing enrollment of mature women on their campuses. This phenomenon of returning adults, which is nationwide, is both a reflection of and response to many social factors: economic need, smaller families, longer life-span, better health, technological advances in and out of the home, and, of course, the growing awareness of discrimination of millions of American women and their insistence on participating more fully in all aspects of life.

The University of Wisconsin System, the Vocational, Technical and Adult Education schools, and most of the private institutions of higher learning in the state admit adult students on a full-time or part-time basis, and most campuses have special counseling, advising, and program offerings. University of Wisconsin—Extension—which provides off-campus credit and noncredit courses, conferences, independent study, radio, TV, and the Educational Telephone Network—quite literally takes the University to all the people of the state. Women's Education Resources of UW-Extension addresses its educational program to individuals, organizations, and institutions, with the specific goal of enabling women of every ethnic and economic group to gain greater control over their own lives and fuller participation in the wider society.

Neither financial aids nor child care have begun to keep pace with the growing needs of the mature students. As the legitimacy of continuing education for women—and for men—gains acceptance, a more satisfactory response to these needs will develop. One aspect of economic equity in divorce, discussed in Chapter 2, is precisely this question of the necessity for a woman who has not been in the paid labor force to update, revive, or develop marketable skills when her marriage ends. Some courts are now taking this need into consideration in divorce settlements. In April 1975, for example, the New York Supreme Court awarded a 27-year-old woman $200 a week alimony for five and one-half years to complete her medical education. When her husband objected, on the grounds that her current income as a typist and data analyst was sufficient, Justice Kassal ruled:

> The wife . . . should not be automatically relegated to a life of being a well-paid skilled technician, laboring with a lifelong frustration as to what her future might have been as a doctor. . . . She merely seeks for herself the same opportunity which she helped give her husband.

Not only are adult women in tremendous numbers and for a variety of reasons continuing their education, but women scholars and teachers are beginning to have far more influence over the content of what is researched, written, and taught at all levels. Faculty women have organized on many campuses and in Wisconsin have formed a statewide Coordinating Council of Women in Higher Education. National educational organizations such as the Association of American Colleges and the American Association for Higher Education have special offices for women. Beginning in 1969 with the Modern Language Association, by 1975 virtually every national academic association had established a women's caucus or committee to open professional opportunities for women and, in remedying the neglect and distortions of the past, to incorporate women more realistically as participants and as subjects in the substance of their respective disciplines. Under the general heading "Women's Studies," the products of these efforts are being introduced into curricula. The process of scholarly revision is a long one, facing the reluctance of vested interests and of tradition; the results of the revision have enormous potential for advancing women's quest for justice.

# 7 FAMILY PLANNING

Many areas of health care are of great concern to women and their families. Of special interest is the right to determine if and when to produce children. The question of state interference or government participation in regulating the reproductive life of women is a deeply contested question, highly charged with emotional and, often, religious overtones. Medical advance and the population explosion add to women's growing insistence on the right to choice in all aspects of their lives, including reproduction. This chapter deals with current Wisconsin law regarding venereal disease, birth control, abortion, and sterilization.

## BIRTH CONTROL

For many years, Wisconsin was the only state that outlawed the sale of contraceptives to unmarried persons. Devices intended to prevent conception were labeled "indecent articles." In 1976, however, a new law was enacted, permitting unmarried persons to purchase contraceptives.[1] This change was made after a number of court cases had found efforts to deny contraceptives to unmarried persons unconstitutional.[2] Even under the terms of the new law, only doctors, nurses, and pharmacists may sell contraceptive devices. Commercial advertising and display of contraceptives and vending machine sales are still illegal.

## ABORTION

In 1973 the U.S. Supreme Court held that the decision to have an abortion is part of the right to privacy and, consequently, is protected by the federal constitution.[3] This means that a state cannot prohibit the performance of abortions until the third trimester of pregnancy. Prior to that point, the decision to terminate a pregnancy may be made solely by the pregnant woman and her doctor. However, many Wisconsin women wishing to terminate a pregnancy still have difficulty in obtaining medical services for the procedure. A Wisconsin law passed in 1973 permits hospitals to refuse to allow the use of their facilities for abortions and permits doctors and nurses to refuse to perform or assist in the performance of abortions.[4] This provision was carried over in the 1975 recodification of the medical practices act and continues to be the law in Wisconsin.[5] As a result of this so-called conscience law, many physicians flatly refuse to perform the procedure. Perhaps more significant, however, is the fact that only 11 percent of non-Catholic private hospitals and 13 percent of public hospitals in Wisconsin reported use of their facilities for legal abortion procedures as of March 1975.[6] If it had not been for the existence of abortion clinics in Madison and Milwaukee that provided the medical services needed to terminate unwanted pregnancies on an outpatient basis, many women would have been effectively denied their constitutional right to choose whether to become parents.

A federal court recently found unconstitutional one Wisconsin public hospital's rule restricting the performance of abortions.[7] Milwaukee County

General Hospital permitted abortion only where the pregnant woman's life would be endangered by continuation of the pregnancy. The court required the hospital to permit the use of its facilities by staff personnel who have no conscientious objections to abortion for the performance of elective abortions. As a result of this decision, more hospital facilities should become available for the performance of elective abortions in the near future.

Another issue that affects the availability of abortion to many women concerns the use of public funds to finance the procedure. Most directly involved are women receiving public assistance. All women receiving health insurance benefits subsidized by the state and all women who wish to have abortions in public hospitals may also be affected. Many courts throughout the country, including a Wisconsin court, have considered this issue; most have concluded that the equal protection clause of the Fourteenth Amendment to the U.S. Constitution requires the use of public funds for elective abortion if public funds are available for other medical treatment due to pregnancy.[8] The U.S. Supreme Court has agreed to decide this issue, but has not yet done so.[9] A serious attempt was made in the 1975 Wisconsin legislative session to enact legislation prohibiting the use of any public money for abortion unless the pregnant woman's life was threatened. This proposal passed the Assembly by a vote of 78-18 but did not come to a vote in the Senate before the session ended.[10]

A third issue relating to a woman's ability to obtain an abortion concerns the rights of others—generally the man who impregnated the woman, or the woman's parents if she is a minor—to intervene in the decision to terminate a pregnancy. The problem of parental consent as it affects a minor woman's rights will be discussed below in a separate section on minors. Wisconsin law has never required the consent of a husband or expectant father in order for a woman to obtain an abortion. The U.S. Supreme Court recently held that requiring such consent is unconstitutional at least during early pregnancy, since a state cannot "delegate to a spouse a veto power which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy."[11]

## STERILIZATION

Voluntary sterilization is permissible under Wisconsin law for adult women and men and does not require spousal consent.[12] Some doctors and hospitals may by policy require such consent as a prerequisite to performance of the procedure; however, additionally, they may refuse to sterilize persons below a certain age or having fewer than a certain number of children. Many doctors and hospitals have general policies opposing sterilization under any circumstances, even in cases where the procedure is medically indicated. Since Wisconsin law permits medical personnel and hospitals to refuse to perform sterilizations,[13] many women are unable to obtain this kind of medical care. Six of the seven perinatal centers in Wisconsin are located in hospitals that refuse to provide sterilization services.

A woman who becomes pregnant after either she or her husband has voluntarily undergone a sterilization procedure generally has had little legal

recourse, since courts have felt that the child's birth—though unplanned and unwanted—provides more benefits than burdens for the parents. Recently, however, there has been more willingness to permit monetary recovery for the wrong done in an incomplete or incompetent sterilization procedure.[14]

During the last half of the nineteenth century and the first half of the twentieth, the discovery of surgical sterilization procedures for men and women influenced many states to provide for compulsory sterilization of persons suffering from mental disorders. Some 23 states, including Wisconsin, have such a law.[15] In Wisconsin, as in the other states, this law makes no distinction between the mentally retarded and the mentally ill. It permits the head of an institution where an individual resides, in conjunction with the unanimous opinion of a surgeon and psychiatrist, to have the person sterilized. A 30-day notice must be given before sterilization takes place. No sterilizations under this law have been performed in Wisconsin since 1961.

Recently, such laws have been criticized. Some view nonconsensual sterilization as akin to Nazi racist policies; others point out that research into mental retardation shows this condition arises as much from environmental as from hereditary factors.

Other states, however, have recently enacted compulsory sterilization statutes for mental incompetents and have attempted to mandate the compulsory sterilization of welfare mothers who have had two or more children out of wedlock. Such punitive approaches may constitute race and class discrimination because sterilization laws have been applied mainly to institutionalized persons, a large portion of whom are poor and black.[16]

Most responsible citizens now believe that there must be constant public vigilance to prevent the abuse of nonconsensual sterilization statutes and that democratic principles and standards to protect the individual must always be kept in mind. In conjunction with this concern, Dane County Judge P. Charles Jones has ruled that because of its irreversibility, the sterilization of a mentally retarded person should not be performed without a specific court order following a full evidentiary hearing. He also ruled that sterilization should not be undertaken unless and until all alternative, less drastic birth control methods, including the pill or an intrauterine device, had been tried.[17]

## RIGHTS OF MINORS

Generally, minors must have the consent of their parents in order to receive medical care. This is because minors are legally incapable of giving consent to be treated, and medical treatment without consent is illegal. Doctors who treat minors without obtaining parental consent may be charged with battery, and they risk loss of compensation for their services, since a minor's agreement to pay is not legally binding.

This general rule creates tremendous problems for minors who need contraceptives, abortions, or treatment for venereal disease, but who are unwilling to confide in their parents or are unable to obtain the necessary consent. As a result, many minors have gone without needed health care and have suffered permanent disability or even death. Such disastrous

consequences have led to a number of exceptions to the general rule requiring parental consent for the medical treatment of a minor.

Many states provide by statute that minors may obtain contraceptive care and abortion services without parental consent.[18] Wisconsin, however, has no such statute. Case law in state and federal courts has established that the constitutional right to privacy encompasses a minor's right during early pregnancy to decide, without parental intervention, whether to obtain an abortion.[19] Presumably, the right to privacy also encompasses a minor's right to request and receive contraceptive care without parental consent.[20] Thus, minors in Wisconsin probably have the right to receive these medical services without parental permission; but because we do not have a statute explicitly setting forth this right, and because members of the medical profession are understandably reluctant to subject themselves to legal difficulties, many minor women still are unable to obtain appropriate medical care for the prevention or termination of pregnancy. The State Department of Health and Social Services operates under a federal mandate to provide family planning services or referrals to providers of such services to minors who are eligible for public assistance. It is the department's position that parents are not liable for the cost of services provided without their knowledge or consent.[21]

Wisconsin, like all other states, does permit minors to be examined and treated for venereal disease without parental consent.[22] Physicians providing such treatment may not be held civilly liable solely because they did not require parental consent.

## ARTIFICIAL INSEMINATION

Wisconsin, like many other states, has no law regulating artificial insemination. Artificial insemination, a procedure whereby a woman is impregnated without sexual intercourse, is most often utilized by married women whose husbands are sterile. While the legal problems accompanying the procedure have not arisen frequently in Wisconsin, the legitimacy of offspring resulting from artificial insemination has been contested in courts in other states.[23]

# 8 TAXES AND SOCIAL SECURITY

In the past, most women were content to leave money matters in the hands of men. Even today, many wives—despite the fact that their signatures make them legally responsible for any misrepresentations or inaccuracies on tax returns—unquestioningly sign joint tax returns prepared by their husbands without looking at the figures or understanding what they mean. A growing number of women, however, no longer find it acceptable to leave in the hands of experts or male relatives the financial matters that determine in large measure women's economic status. This chapter discusses public economic policy issues presented by the tax structure and the Social Security system. Chapter 9 deals with economic practices in the private sector.

## TAXATION

Deductions allowable and tax relief are very much a part of available income. One must understand the policies and procedures in order to maximize the legal possibilities.

### Federal Income Tax

For federal income tax, a married couple may elect to file either a joint return or a "married filing separately" return. If the spouses have equal taxable incomes, their tax rate is essentially the same with either return. If the spouses have unequal taxable incomes, their tax rate is less with a joint return than with a "married filing separately" return. However, the tax rates for "married filing separately" are higher than comparable rates for single persons.[1]

A married individual cannot pay tax on just her/his income and file as a single person, but must participate in an income-splitting system; that is, the spouses together pay tax on their combined earnings. Income splitting via joint returns is a definite advantage if one spouse is not a wage earner or one spouse earns much less than the other because the total income, though earned primarily by one person, is spread between two taxpayers. This puts the couple in a lower tax bracket, which yields a lower overall tax burden. Spreading or splitting income between the two taxpayers creates a tax savings because the federal tax rates are progressive, meaning that the percentage of tax imposed increases as taxable income increases. However, if both spouses are wage earners with similar incomes, this mandatory income splitting is a disadvantage because of the different tax rates applicable to single and married persons. Those different rates, coupled with the requirement of filing as a married person, impose a higher tax burden on spouses who have equal incomes than is imposed on two single taxpayers in the same economic position.

Both spouses may sign a joint return. Except in extraordinary circumstances, joint returns make both spouses liable for the tax and for the information provided on the return, even though one spouse had little or no income or any control over the couple's finances.[2]

A single person under 65 years of age, earning less than $2350 per year and claiming one exemption, does not have to pay any federal income tax. The same is true for a married couple earning less than $3400 per year and claiming two exemptions, if both are under 65 years of age. If one spouse is over 65, the couple can earn $4150 without tax liability. If both are over 65, they can earn up to $4900 tax free. For those anticipating annual incomes below the applicable taxable minimums, a W-4E form can be filed with the employer and no tax will be deducted from paychecks.

To a very limited extent, employees can determine the number of exemptions they wish to claim for purposes of payroll deductions. Single persons may normally opt for one or no deductions for withholding purposes. An option to take two deductions is available for a single person with only one job, if s/he anticipates heavy medical or other expenses which would decrease tax liability. Persons over age 65 may take a double exemption.[3]

The federal deduction for child care expenses was modified in the Tax Reform Bill of 1976. It is now a tax credit, so it is available to taxpayers who use the standard deduction and who do not itemize their deductions.[4] The credit is up to 20 percent of the eligible expenditures for the care of dependents who are less than 15 years of age, or for dependents of any age who are mentally or physically unable to care for themselves. The credit is limited to $2000 if care is provided for one dependent, and to $4000 if care is provided for two or more dependents.[5] The credit applies to couples where both spouses are employed full time and to couples where one spouse works full time and the other either works part time or is a student. It is also available to divorced or separated parents who have custody of a child and who supply at least half of the child's support.[6]

### State Income Tax

Under Wisconsin law, unlike the federal system, married persons are liable for the tax on their individual incomes.[7] There is no joint liability for the combined earnings of the spouses. In Wisconsin, it makes no difference if a joint or individual return is filed or if the taxpayer is married or single, since the tax imposed is individualized. The Wisconsin system lacks the income-splitting advantage of the federal system, which benefits couples where spouses are unequal wage earners or only one is in paid employment.

If the spouses work together to operate a farm or business, the couple might consider signing a formal partnership agreement. This would not only help to give the wife a legal share in the family enterprise but also would permit the couple to enjoy the tax benefits of income splitting, since each would be receiving income generated from the partnership business.

A couple considering a partnership agreement should be aware that such agreements have generally not been accepted by the Wisconsin Tax Appeals Commission or the Wisconsin courts. If such a partnership is formed there are other legal duties and liabilities inherent in the partnership arrangement, e.g., personal liability of each partner for the debts of the partnership and reduction of Social Security benefits. Professional advice should be sought if this arrangement is considered.

## Homestead Tax Relief

Any person 18 years of age or older who was domiciled in Wisconsin during the entire calendar year preceding the year in which s/he files the claim, who has received an income of $7500 or less, who is not receiving AFDC under the *Wisconsin Statutes,* Section 49.19, or general relief, and who has not been a dependent of another taxpayer for income tax purposes during the year in which the property tax or rent was paid, may apply for Wisconsin homestead tax relief for rent or property tax. The maximum rebate is $428.

The individual seeking this tax relief must count *all* income coming into the household (not just taxable income), including but not limited to pensions, Social Security benefits, alimony, and child support payments. The amount of tax relief or rebate is calculated according to fixed tables based on amount of income and property tax or rent paid.

## Wisconsin Inheritance, Estate, and Gift Taxes

Federal tax law and Wisconsin tax law are similar in many respects, but there are also many points of departure. The federal estate tax system taxes the estate of the decedent (deceased property owner). This means that a tax is levied on the value of all the decedent owned or in which s/he had a legal interest at the time of death.[8] The Wisconsin inheritance tax system taxes the recipients of property distributed from estates instead of the estate itself. In Wisconsin, inheritance tax is levied on the basis of both the value of the property and the degree of relationship that the recipient bore to the decedent, e.g., spouse, child, sibling.[9] There is a $50,000 exemption for inheritance taxes for surviving spouses in Wisconsin.[10]

Only when there is federal estate tax due does Wisconsin impose an estate tax.[11] This tax does not increase the taxpayer's overall tax payments because of a credit for state estate tax paid that is available against the federal estate tax. Like the federal tax rates, Wisconsin gift and inheritance tax rates are progressive. The Wisconsin estate tax is not progressive, but is a flat rate. The Wisconsin estate tax is due when the federal estate tax is due.[12] The inheritance taxes are due within one year after death.

Often two people—particularly if they are husband and wife—own property jointly. There are two basic ways in which property may be held jointly: in *joint tenancy* and in *tenancy in common.*

Owners who hold property as tenants in common have a present interest in the property to the extent of their proportionate share of the property. (If two people own the property, each would have a one-half share.) Each cotenant may convey her or his share of the property without the approval of the other cotenants. When one cotenant dies, only her/his share of the property is subject to taxation in her/his estate.

The other form of joint ownership—joint tenancy—means that two or more persons are considered co-owners of the property. During the lives of the joint tenants, they each have an equal and undivided interest with rights of survivorship to the property. The right of survivorship means that upon the

death of a joint tenant, the decedent's interest passes to the surviving joint tenants. Recently, Wisconsin law has considerably changed the way joint tenancies have been taxed upon the death of a joint tenant.

Joint tenancies in properties which are in estates of decedents who have died after July 1, 1976, and which are considered to constitute a completed transfer, are taxed under the fractional interest rule. The fractional interest rule means that regardless of the proportions of money which the individual joint tenants contributed toward the purchase of the property, they will own the property in equal shares. Shares are calculated by dividing the total value of the property by the number of joint tenants; e.g., if spouses are joint tenants in a property worth $30,000, then each owns 50 percent of the property, or $15,000; if there are three joint tenants, then each will own 33.33 percent of the property, or $10,000.

As long as the ownership instrument demonstrates a joint tenancy in the property and the property is considered to be a complete transfer, only the fractional share of the property which the decedent owned at the date of death will be included in her/his estate for estate and inheritance tax purposes.[13] For example, if a surviving spouse and the decedent held real estate valued at $40,000 in joint tenancy and both of their signatures were necessary to convey the whole property, then only the decedent's $20,000 share will be taxed, regardless of who provided the purchase money for the property. However, if the joint tenants did not make equal contributions to the acquisition of the jointly held, complete transfer property, both federal and Wisconsin gift taxes may be due on that portion of the survivor's share which had been paid for by the decedent.

Jointly held property which is considered a completed transfer cannot be conveyed as a whole unless all joint tenants agree. If only one joint tenant's signature is necessary to transfer an entire property, this is considered an incomplete transfer and the fraction interest rule does not apply. Examples of such jointly held, incomplete transfer properties are joint savings and checking accounts, since either tenant can withdraw all the money at any time with just her/his signature.

The contribution rule is applied to incomplete transfers. This means that only the proportion of contribution which the decedent put toward the acquisition of the property will be included in the estate for estate and inheritance tax purposes.[14] For example, if a couple had a savings account of $20,000 in joint tenancy, and the husband had been the only wage earner, on his death the wife would be required to pay inheritance tax on the full $20,000 unless she could prove that she had personally contributed some of the money in the account. However, if the wife died first, the husband would pay no tax on the $20,000 because it is presumed that he was the sole contributor. The Wisconsin Supreme Court has held that services of a wife on a family farm will be considered as contribution, and the value of her contribution will be exempt from estate and inheritance taxation.[15] The federal rule is currently unsettled. However, the weight of authority appears to be that federal tax law still recognizes only monetary contributions.

Gift taxes are fairly similar in both systems. Under both Wisconsin and federal law, gift taxes are imposed only on gifts of more than $3000 in value to each recipient in each tax year.[16] Gift taxes are imposed even if the gift is from one spouse to another, although 50 percent of the value of the gift is deductible.

In both systems there are lifetime (not annual) exemptions, permitting gifts to be given tax free, which are gradually exhausted as gifts are made during the donor's lifetime. The Wisconsin lifetime exemption for interspousal gifts is $25,000; it is $4000 for gifts to one's children.[17]

If gift tax is paid on any item, the value of that item will be excluded from the estate of the donor for Wisconsin inheritance tax purposes unless the gift was made within three years of her/his death.[18] The federal system handles this differently (see below). The same tax rates apply to both gift and inheritance taxes in Wisconsin.[19]

**Federal Estate and Gift Taxes**

Gifts to any one recipient in any tax year must exceed $3000 in value to be taxable. The Tax Reform Act of 1976 provides a unified credit of $47,000 for gift and estate tax liability. Since this is a tax credit, i.e., a credit against taxes due, it is the equivalent of $175,625 of exemptions.[20] Before the 1976 act, the federal system operated on an exemption system, as Wisconsin does.

A uniform rate schedule for estate and gift taxes is also provided in the 1976 act.[21] The value of all gifts and the amount of gift tax paid on gifts that were made by a decedent within three years of death are included in the estate for estate tax purposes. However, a credit against the estate tax is available for the gift tax which was paid on these gifts.[22]

The maximum marital deduction available to the surviving spouse for estate and gift tax has been increased under the 1976 act. The marital deduction for estate taxes is $250,000 or 50 percent of the net value of the estate, whichever is larger.[23] This is in addition to the $47,000 gift tax credit. The lifetime marital deduction for gift taxes is $100,000, and when that deduction has been exhausted, the deduction is 50 percent of the interspousal gift.[24]

With regard to joint tenancies, with the passage of the 1976 act, federal estate tax is similar to current Wisconsin inheritance tax law, to the extent that now both apply the fractional interest rule to joint tenancies created after December 31, 1976. When a joint tenancy is created and the spouses do not contribute equal dollars, the property is treated as equally owned by the joint tenants, regardless of whether the spouses contributed equal dollars to the purchase price of the property.[25]

For joint tenancies created before December 31, 1976, a contribution rule is applied. This means that the property is considered to be held in proportion to each joint tenants's monetary contribution toward the acquisition of the property. Services, such as services of a homemaker, are not considered monetary contributions under federal law. Only the proportion of funds monetarily contributed by the surviving joint tenant will be exempt from taxation in the decedent's estate.[26] The burden is on the surviving spouse

to prove how much s/he financially contributed to the acquisition of jointly held property if the joint tenancy was created prior to December 31, 1976.

If the spouses make unequal monetary contributions toward the acquisition of jointly held property, federal law considers this to be a gift, and gift tax may be due if the value of the gift exceeds $6000. If the property involved is real estate owned by spouses in joint tenancy, it is exempted from federal gift taxation unless the spouses elect to treat it as a taxable gift.[27]

### Tax Planning and Divorce

Special attention should be given to tax planning in the event of divorce. The following deals with federal tax regulations. Legal or professional fees for tax planning by an attorney or an accountant are deductible, although representation or legal fees in the divorce are not deductible. For income tax purposes, a couple is considered married for the entire calendar year in which a divorce is granted. Periodic alimony payments of a fixed amount paid over an indefinite period of time are deductible to the person paying the alimony and are taxable income to the recipient. Lump-sum alimony is generally neither deductible by the person paying nor taxable to the recipient if the lump-sum installments are made within a ten-year period. However, if paid over a period of more than ten years they are considered periodic payments and come under the same tax regulations as alimony.

Child support payments are neither deductible by the parent paying support nor taxable as income to the custodial parent. There is a presumption favoring the parent with custody; if a child resides with that parent for most of the year, the child is that parent's dependent. Here the Internal Revenue Service (IRS) considers the custodial parent to have contributed more than half of the support of the child. However, the parent who does not have physical custody of the child may be entitled to the exemption if (1) s/he contributed more than $600 toward the child's support during the calendar year; and (2) under the decree of dissolution, or written agreement the parties, that parent is given the right to take the exemption.

If the noncustodial parent provided $1200 or more to support the child or children for a calendar year, the custodial parent must "clearly establish that s/he provided more for the support of the child or children." Should the question of claiming exemption be contested, each parent must submit itemized statements of what was actually spent. This situation frequently places an undue burden on the custodial parent, usually the woman, to keep careful records of expenses. Nor does the $1200 figure increase if there are two, three, or four children. This could mean that a noncustodial parent, the father, for example, could contribute $300 per year for each of four children and still receive and exemption of $750 per child, or $3000.

Problems such as this can be resolved more easily by dividing exemptions when there is more than one child. A mother might find it to her advantage to take an exemption for her youngest child because it will apply for the longest time and also enable her to deduct child care expenses should she work at paid employment. Child care expenses are deductible if the child is a dependent of a taxpayer and under 15 years of age, or physically or mentally handicapped.

Expenses must be employment related, which means household services and expenses for the care of the dependent that enable the taxpayer to be gainfully employed.[28] The dependent care provisions apply to divorced, married, widowed, and single individuals with children and to individuals supporting a handicapped relative who qualifies as a dependent. The expenses for such care are deductible only to the extent that they do not exceed $400 in any month.

## SOCIAL SECURITY

Social Security is the nation's basic method of providing a continued income when family earnings are reduced or stopped because of retirement, disability, or death.

When first enacted in 1935, the purpose of Social Security was to provide benefits for the worker in retirement and for his wife and children in the event of his death. Social Security regulations were based on the traditional roles of men as breadwinners and women as homemakers. Slowly, and because of the dedicated efforts of such persons as Congresswoman Martha Griffiths, these policies have been changing to reflect the fact that women as well as men are breadwinners and contribute to the support of their families. However, vestiges of the early policies remain and women are not yet assured equal protection under Social Security.

Women comprise 59 percent of persons over 65 years of age and almost two thirds of those over 75 years of age.[29] How well does the Social Security system serve these women? In 1972, 42 percent of women, but only 19 percent of men, received less than $120 a month in Social Security benefits. Men are more than three times as likely as women to be entitled to the maximum allowable benefits; women are three times as likely as men to be entitled to the minimum.[30] These figures indicate that women do not receive equal treatment under Social Security.

### How the System Works[31]

At first, Social Security covered only the worker in retirement. Now it has been expanded to include most self-employed persons, most state and local employees, household and farm employees, members of the Armed Forces, and clergy. However, wives who work for members of the immediate family, such as a husband or son, are not eligible for Social Security as workers unless they form a business partnership or corporation.

Disability insurance was added in 1954 to give workers protection against loss of earnings due to total disability. The program was expanded again in 1965 with the enactment of Medicare, which assured hospital and medical insurance protection to people aged 65 and over, and again in 1973 to include persons who have had disability checks for two or more years and to those who need kidney transplants or dialysis.

Monthly Social Security checks may go to workers and their dependents when the worker retires, becomes severely disabled, or dies. Monthly benefits for retirement can start as early as age 62 should the worker so choose, but the benefits will be less than if s/he retired at age 65. Disability checks begin

when a worker is severely disabled before age 65. A worker is eligible for disability when s/he has a severe physical or mental condition that is expected to last or has lasted at least 12 months or is expected to result in death. Checks start the sixth month of disability and continue as long as the worker is disabled and can continue even though s/he manages to work a little.

Monthly Social Security checks are paid to certain dependents of a worker who has retired, become disabled, or who has died. Retirement or disability payments can be made to a retired or disabled worker's unmarried children under age 18, or under age 22 if full-time students; unmarried children under age 18, or over age 18 who were severely disabled before age 22 and continue to be disabled; wife or dependent husband aged 62 or over; wife or husband under age 62 if s/he is caring for the worker's child under age 18 (or disabled) who is receiving a benefit based on the retired or disabled worker's earnings.

Survivors' monthly payments can be made to a deceased worker's unmarried children under age 18, or under age 22 if full-time students; unmarried children under age 18, or over age 18 who were severely disabled before age 22 and continue to be disabled; a widow or dependent widower aged 60 or older; a widow under age 60 or surviving divorced mother if she is caring for worker's child under age 18 (or disabled) who is receiving a benefit based on the earnings of the deceased worker; widow or dependent widower aged 50 or older who becomes disabled not later than 7 years after worker's death; or in case of a widow, within 7 years after she stops getting checks as a widow caring for worker's children; dependent parents aged 62 or older.

A divorced wife becomes eligible for benefits based on her former husband's earnings at age 62 if the marriage lasted 20 years or more. Similarly, where the marriage lasted at least 20 years, a divorced wife whose ex-husband is deceased may receive benefits at age 60 or, if she is disabled, at age 50.

Generally, a marriage must have lasted at least one year before dependents of a retired or disabled worker can get monthly benefits; survivors can get benefits in most cases if the marriage lasted at least nine months.

Before an individual or her/his dependents can get monthly benefits, the worker must have credit for a certain amount of work under Social Security. The exact amount of work credit depends on the worker's age as well as earnings.

For each three-month calendar quarter that an individual works and is paid wages of $50 or more, the worker gets one Social Security quarter of coverage. If s/he works the whole calendar year, s/he gets four quarters of coverage. A self-employed persons receives four quarters of coverage per year when s/he earns a net profit of $400 or more.

If a person stops working before earning enough credit, s/he cannot get the benefits later on. However, this credit will stay on the record and can be added to if the individual again returns to work.

Social Security checks usually are based on average earnings over a period of years. Both the worker and the employer contribute to Social Security. Under present law, workers pay Social Security taxes at a rate of

5.85 percent on the first $15,300 in earnings. No additional tax is paid on earnings above $15,300 and the percentage paid does not vary in proportion to one's income.

Social Security checks are not subject to federal income tax. If a woman qualifies for Social Security benefits on her own work record and her husband's as well, she can choose the larger of the two amounts. A lump-sum death benefit payment of $255 is paid to the surviving spouse or other survivor or to the funeral director.

The Social Security Administration has about 1200 offices located throughout the country and representatives of these offices also make regular stops in neighboring communities.

When applying for a Social Security benefit, the applicant should have her/his Social Security card or Social Security number, or if the claim is on another person's record, that person's Social Security number, proof of applicant's age (a birth certificate or baptismal certificate), a marriage certificate if applying for spousal benefits, children's birth certificates if applicant is applying for benefits for them, a Form W-2 for the previous year to provide income verification. If applying as a dependent husband or widower, the applicant must show proof of support.

### How the System Discriminates

The Social Security system is based on the assumption—perhaps more justifiable in 1935 than it is today—that men are breadwinners and women remain in the home to care for children. In fact, 90 percent of all women work at paid employment at some time in their lives.[32] This discrepancy between the assumption and reality means that both men and women suffer from the sexist stereotypes that determine eligibility for benefits and benefit levels.

To begin with, sex discrimination in Social Security benefits reflects sex discrimination in employment. Women typically earn low wages,[33] and benefits are based on earnings. Thus, women generally receive low benefits as retirees or disabled workers. Furthermore, the $15,300 cutoff level for earnings contributions means that those earning more than $15,300 (primarily men) pay a disproportionately low percentage of their incomes into the Social Security system, while those earning low wages (including most women workers) bear an undue burden. The absence of flexible hour options, paid maternity leaves, and child care facilities in the workplace discriminate against working mothers not only when they have young children but also when they reach retirement age. Since the formula according to which benefits are computed averages earnings over the worker's career, and since the time which women must spend out of the work force raising their families is included in computing the average, time out for child rearing reduces benefits.

All earners pay into Social Security at the same rate, regardless of their family situation. But benefits are paid both to the workers and to their dependents. A wife or widow automatically receives benefits based on her husband's earnings. However, before he could receive benefits, a husband or widower has had to prove that he was, in fact, dependent on his wife for at

least half of his support when she retired, became disabled, or died. Furthermore, widows caring for minor children are entitled to benefits, but widowers in the same position have not been able to receive benefits. In 1975 the U.S. Supreme Court held that the denial of benefits to a widower caring for minor children violated the Fourteenth Amendment's equal protection clause.[34] This ruling has cast into doubt the constitutionality of other provisions that allow benefits to women but deny them to similarly situated men.[35] The 1974 Advisory Council on Social Security has recommended that the proof of dependency requirement for husbands and widowers be eliminated, and that for any category of women entitled to dependents' benefits the corresponding category of men should be entitled to the benefits on the same basis.[36] This would mean that divorced men and fathers of minor children would be entitled to benefits on the same basis as divorced women and mothers of minor children. These changes would be significant in their recognition of the important economic contributions women make to their families. They would provide benefits to men, the direct beneficiaries, and also to women workers, whose contributions currently buy less protection for their families, dollar for dollar, than do male workers' contributions.

Another problem relating to benefits received as they compare with contributions made is that faced by married couples where both spouses are employed. Their retirement income may be no greater than if only one spouse had paid into the system—and it will almost certainly be less than the retirement benefits paid to another couple at the same income level where one breadwinner earned all the income. The spouse earning less money—generally the wife—receives no benefit for her payroll tax contribution. For example, couple A, where only the husband worked, averaging $9000 annually, receives $531.80 a month—his benefit plus an additional 50 percent for his wife. Couple B, averaging the same annual income of $9000 but with $6000 earned by the husband and $3000 by the wife, receives only $444.50—his benefit plus 50 percent for his wife, since 50 percent of his benefit is greater than the benefit her $3000 average salary has earned for her.[37] A system that bases benefits on the couple's combined earnings would rectify this inequity.

The largest body of workers in this country is still not covered by Social Security. Housewives, 28 million of them, according to a recent study,[38] are not eligible for disability or retirement benefits. They must make do with dependents' benefits, and even these are not available to a woman who is divorced after fewer than 20 years of marriage, or who is widowed, under 60 years of age and has no minor children. These divorced or widowed women are often called displaced homemakers. Too old to find jobs and too young for Social Security, they are discarded from society in their middle years, relegated prematurely to a forced, poverty-stricken retirement. If they earned Social Security credits for their homemaking services, if benefits to divorced women were granted to those married for five or more years, and if benefits were available on the basis of need instead of at an arbitrarily set age, these women would be able to live out their mature years in comfort and dignity.

This, perhaps, is the real irony of the Social Security system. Designed on the assumption that men are breadwinners and women homemakers, it can perhaps be forgiven for not meeting the needs of those who don't fit its stereotypes. Times change, and the bureaucracy slowly evolves to modify its archaic notions. The advisory council has suggested that these modifications be made. But how can one explain the system's total failure to provide for those who fit its assumptions? How can one justify the advisory council's specific recommendation that homemakers *not* be included in the system?[39] The only answer is a further assumption on the part of the Social Security Administration: that all homemakers are married to breadwinners. In reality, of course, death and divorce take their toll. Only 66.5 percent of women aged 55 to 64 live with husbands.[40] It is time to challenge the stereotype that all worthy women remain safely married, so that the one third of U.S. women who are left alone in their middle years may have some of the economic security promised by the Social Security system.

*Note: As we go to press, the U.S. Supreme Court has upheld the right of a widower to receive Social Security benefits on the same basis as a widow—without proof of actual dependency on the deceased spouse (California v. Goldfarb, 45 U.S.L.W. 4237 [U.S. Supreme Court, March 2, 1977]).*

# 9 BUSINESS PRACTICES

Discriminatory business practices affect all women. While comparatively few women are business entrepreneurs, most women have independent needs for credit, insurance, housing, and access to public accommodations. Discriminatory practices in these areas affect the housewife, the working woman, and the female business executive alike. Sometimes discrimination in business practices is sanctioned by law. Often, however, laws have been revised to eliminate discriminatory elements, yet discrimination continues because of lack of knowledge or lax enforcement procedures. Either way, the consequences are economically and personally damaging to women and their families.

## PUBLIC ACCOMMODATIONS

A 1975 amendment to Wisconsin's public accommodations law prohibited discrimination on the basis of sex in places of public accommodation or amusement, including places of business or recreation, hotels and motels, restaurants, hospitals, and cemeteries.[1] However, private facilities and clubs are not covered by the law unless the facilities are commonly rented to the public. This means that private clubs offering dining facilities or sports facilities to men only may continue to exclude women. Since choice business contacts are often made at these exclusive clubs, women in business may find themselves severely disadvantaged by this legal discrimination. Women workers may be denied the opportunity to participate in sports activities because private club facilities easily accessible from their workplaces are available only to men.

Where discrimination occurs in public accommodations, only mild penalties are imposed. The maximum fine is $200; the maximum prison sentence is six months. The aggrieved individual may bring a civil action for damages, however; if successful, s/he may recover court costs and damages of at least $100.

## HOUSING

Sex discrimination in the sale and rental of housing is widespread. Many landlords are reluctant to rent to divorced women, women on welfare, and women heads of households. In university areas, where student housing is scarce, landlords may refuse to rent to single persons of one sex while renting to single persons of the opposite sex. Lending agencies have often refused to give full weight to a wife's income in the determination of the family's financial qualifications for credit to purchase a home.

All of these practices are illegal under both state and federal law. The Wisconsin Equal Rights Act of 1975 prohibited sex discrimination in housing.[2] An aggrieved person may file a complaint with the Equal Rights Division of DILHR for administrative review of the case. A person who suspects that s/he is being discriminated against may test the seller, renter, or

lender to ascertain whether discrimination exists.[3] Testing consists of offering to rent or purchase, not with intent to complete the transaction, but to verify the response—discriminatory or otherwise—of the seller, renter, or lender. Until 1975, testing was prohibited in Wisconsin. Its acceptance as a device to aid in the discovery and proof of discrimination should make our ban on housing discrimination much more enforceable.

The federal Housing and Community Development Act, as amended on August 22, 1974, also prohibits discrimination on the basis of sex.[4] It requires lending institutions to count a wife's income without prejudice in computing total income for the purposes of granting financing for housing. The amendment makes it unlawful to

1. refuse to sell or rent a dwelling, refuse to negotiate for the sale or rental of a dwelling, or otherwise deny or make unavailable a dwelling on the basis of sex;
2. discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith because of sex;
3. make, print, or publish any notice, statement, or advertisement with respect to sale or rental which indicates a preference, limitation, or discrimination on the basis of sex;
4. represent because of sex that a dwelling is unavailable for inspection, sale, or rental when, in fact, such dwelling is so available;
5. discriminate on the basis of sex in the granting of financing of housing or in the terms and conditions of a loan;
6. deny access to membership in any multiple-listing service or real estate brokers' organization on account of sex.

Another significant federal legislative development in this area is the Equal Credit Opportunity Act, effective October 28, 1975, which prohibits discrimination on the basis of sex and marital status in all aspects of transactions with creditors, including credit transactions for the purpose of obtaining improved housing.[5]

The Department of Justice has authority to bring suit against anyone who is engaged in a pattern or practice of discrimination in violation of the Housing and Community Development Act or who is denying equal housing opportunity to a group of persons where the attorney general determines that this denial raises an issue of general public importance. Complaints and information should be directed to the Housing Section of the Civil Rights Division of the Department of Justice.

An aggrieved person may also seek relief by filing a complaint with the U.S. Department of Housing and Urban Development (HUD) or by filing a private suit in federal court for an injunction and for damages against alleged violators of the Housing and Community Development Act for personal instances of housing discrimination. The court may award counsel fees to a prevailing plaintiff and may appoint an attorney for her or him if she or he cannot afford one.

Despite the abundance of law on the subject, housing discrimination based on sex continues largely unchallenged. This is due in part to the fact that the discrimination is often difficult to detect. Also, enforcement mechanisms are cumbersome, time-consuming, and complex; many potential complainants simply lack the time, resources, and determination to pursue administrative remedies. Whatever the reasons, one thing is clear: A man's home may be his castle, but women have a long way to go.

## DISCRIMINATION IN INSURANCE

Insurance is a device for handling risk. It involves anticipation of losses and a redistribution of the burden of the losses among those participating in the insurance arrangement.[6] The insurance industry approaches this spreading of the risk by grouping individuals into risk categories in an attempt to spread the cost of the risk more equitably.[7] Classification by sex has traditionally been used in writing certain lines of insurance.

Since insurance is a means to pool risks among insureds, a more equitable approach abolishes group classifications and treats all insureds on an equal basis, e.g., Social Security.[8] As long as most private insurance is currently based on discriminatory risk classifications, it is important to isolate unfair discrimination in insurance industry practices that result in unequal and unfair treatment of women.

Although no overall formal studies have been conducted in Wisconsin on sex discrimination in insurance, information gathered from such studies in other states is relevant. Only 247 of the 1083 companies, associations, and societies authorized to write insurance in Wisconsin are Wisconsin-based companies.[9] Several of these Wisconsin-domiciled companies write considerable insurance in other states.

As has been demonstrated in the extensive studies completed by California, Iowa, Michigan, New York, and Pennsylvania, the areas and types of sex discrimination in insurance are similar.[10] These sex differentials are seen in (1) underwriting practices (availability of coverage), (2) policy terms and conditions (restrictions and limitations of coverage), and (3) premium rates.

### The Wisconsin Situation

Insurance is not directly regulated by the federal government. The McCarren-Ferguson Act of 1945 placed close regulation of the insurance industry with the states through the respective state insurance departments.[11] Wisconsin's insurance regulatory agency is the Office of the Commissioner of Insurance.[12]

Wisconsin law prohibits insurance rates that are excessive, inadequate, or unfairly discriminatory.[13] The 1975 legislature enacted legislation that prohibits an insurer from cancelling or nonrenewing an automobile insurance policy solely because of the sex or marital status of the insured.[14] Because of Wisconsin's so-called omnibus statute, Section 632.32 (2) (b), individuals cannot be excluded from coverage provided by an automobile liability policy.

However, an individual with a good driver's record could still be rated, classified, and possibly denied coverage on the basis of her/his spouse's poor driver's record.[15]

Although unisex rating (abolition of sex as a basis for premium classifications) was considered in the drafting of the Wisconsin Equal Rights Act, the sponsors believed that prior to such action the implications should be thoroughly researched.[16] It was feared that overall unisex ratings would distort market forces and effectively operate to increase rather than decrease the economic disadvantage now faced by women. Generally, women could expect to pay more for their insurance under mandatory unisex ratings than they do now, while men would pay less. For example, women are better risks for life insurance (they live longer, on the average) and automobile insurance (young women have fewer accidents) than are men. Currently, they pay lower rates to reflect this. Under unisex ratings, they would pay more, in effect subsidizing the cost of insurance for men. Premiums women aged 16 to 25 pay now for automobile insurance could be expected to double, while premiums paid by men of the same ages would be reduced by a third; similarly, women's life insurance rates would increase, though not as dramatically, while men's premiums would probably be reduced slightly.[17]

Two administrative rules became effective in 1976 that address the issue of discrimination in insurance. One rule, Insurance 6.54, prohibits an insurance company that sells automobile and homeowners' or tenants' insurance from refusing, canceling, or denying coverage to a class of risks solely because of the applicant's or insured's past criminal record, physical or developmental disability, past mental disability, sexual preference, or "moral" character. The insurance company cannot place a risk in a rating classification on the basis of any of these factors without credible information supporting such a classification and demonstrating that it equitably reflects differences in past or expected losses and expenses. However, the company does not have to file this information justifying a discriminatory classification with the office of the Commissioner of Insurance.[18]

The second rule, Insurance 6.55, prohibits all insurance companies from refusing or canceling coverage or denying benefits on the basis of the sex of the applicant or insured and from restricting, modifying, or reducing the benefits, terms, or coverage on the basis of the sex of the applicant or insured. Examples of practices prohibited by this rule are

1. denying coverage to females gainfully employed at home, employed part-time, or employed by relatives when coverage is offered to males similarly employed;
2. denying benefits offered by policy riders to females when the riders are available to males;
3. denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees;
4. denying disability income coverage to employed women when coverage is offered to men similarly employed;

5. treating complications of pregnancy differently from any other illness or sickness under a contract (this does not apply to disabilities due to normal pregnancy);
6. restricting, reducing, modifying, or excluding benefits payable for treatment of the genital organs of only one sex;
7. offering lower maximum monthly benefits to women than to men who are in the same underwriting, earnings, or occupational classification under a disability income contract;
8. offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same underwriting, earnings, or occupational classification under a disability income contract;
9. establishing different conditions based on sex under which the policyholder may exercise benefit options contained in the contract;
10. setting different rates based on sex which cannot be justified by credible supporting information.[19]

The insurance commissioner's office is currently reviewing all new forms and all requests for rate increases where there is a distinction based on sex to determine whether the forms and rates satisfy the requirements of Insurance 6.55.[20] Since existing forms are not being reviewed, individuals might want to check their own contracts and policies to determine if they contain any violations of these rules. Questions or inquiries should be directed to the Commissioner of Insurance, whose address is in the Directory of Services at the back of this handbook.

The Wisconsin Supreme Court recently ruled that it is sex discrimination for an employer in the private sector to treat temporary disabilities related to pregnancy differently from other temporary disabilities under the Wisconsin Fair Employment Act.[21] This subject is discussed more fully in Chapter 3, "Parental Rights and Responsibilities." The important point here is the effect this decision may have on insurance plans which differentiate between pregnancy and other temporary disabilities. Since the case is so recent, its impact on insurance is not yet known.[22]

### Health Insurance

There are four basic types of health insurance policies: hospital expense, surgical expense, medical expense, and major medical. Hospital expense policies generally cover room and board and other miscellaneous hospital services. Medical and surgical expense policies generally cover in-hospital medical expenses, surgery, and anesthesiology. Major medical policies can be purchased separately or in addition to hospital, medical, and surgical expense coverage. These policies generally cover medical expenses not covered by or in excess of the coverage provided by the hospital, medical, and surgical expense policies. Major medical policies are characterized by a *deductible* (a provision that the first given number of dollars of expense will not be reimbursed) and a *co-insurance* provision (a provision that the insured and insurer will share covered losses in agreed proportion, usually 20-80 percent.)[23]

The most discriminatory practices found in the area of health insurance are unavailability and inadequacy of maternity benefits and fertility-related services.[24] Maternity coverage is often not available to single persons or dependent female children who are covered for all other conditions. When it is available, maternity coverage is usually limited to a flat amount or a specified maximum length of time—limitations that are not placed on other types of medical care.[25] Health insurance policies frequently exclude oral contraceptives when other prescription drugs are covered, seldom provide adequate coverage for voluntary sterilization, frequently exclude coverage for voluntary abortions, and apply special waiting periods to "diseases of female reproductive organs."[26]

### Disability Income Insurance

Disability income insurance is a form of coverage designed to compensate an individual for inability to engage in gainful occupation as a result of an accident or sickness. The disability income policy specifies the type or scope of disability for which benefits will be paid, the periodic payments to be made, when the benefits will start, how long the benefits will continue, and the specific policy exclusions.[27]

Coverage in the event of a disability is not uniformly available to individuals who would like to insure themselves. It is not generally available to women who do not work outside the home or to part-time workers, and maximum monthly indemnity benefits and maximum benefit periods are not equally available.[28]

Pregnancy-related disabilities (normal pregnancies and/or complications of pregnancy) are often excluded from disability income policies.[29] Under Insurance 6.55, it is now illegal for an insurance company to treat complications of pregnancy different from any other illness or sickness under the policy. However, the rule does not prohibit differential treatment of disabilities due to normal pregnancy.[30]

### Life Insurance and Annuities

There are three basic types of life insurance contracts. Term insurance offers protection against death only within the given time stated in the policy. Whole life insurance furnishes protection whenever death should occur. The level of premium is based on whether it is payable throughout the insured's lifetime (straight life policy) or payable for a specified period, such as 20 years (limited payment life). Endowment insurance furnishes protection if the insured dies within the endowment period and provides for payment of the face amount of the policy if the insured is living at the end of the endowment period. Both whole life and endowment policies accumulate cash values.[31] The insured may use this cash value, or accumulated savings, by taking out a policy loan, by receiving the value in cash if the policy is surrendered, by exchanging the value for a paid-up insurance policy, or by purchasing an extended term insurance policy.

Modifications and combinations of these policies are available. They include family income policies, family maintenance policies, and family policies.[32]

The annuity policy is designed so the insured receives a given amount of income periodically for a specified length of time, usually conditioned on the continued survival of the annuitant.[33]

Women may find only a limited variety of life insurance policies available to them. Package plans, such as family policies, are frequently unavailable to women and the amount of coverage a woman may purchase may be limited to the coverage in force on her husband.[34]

Terms under which women may exercise contractual rights contained in policies and purchase contract riders such as guaranteed insurability options and waiver of premium options are often different from and more restrictive than the terms offered to men. The disability income protection rider, while it is available to males in all but the most hazardous occupational classifications, is often not available to women. The guaranteed insurability option, which allows an insured to increase the amount of life insurance without submitting further evidence of good health at stated time intervals or at predetermined ages, may be available to males upon marriage or at the birth of a child but is often not available for females.[35]

Since females live, on the average, six to nine years longer than males, the calculation of life insurance rates and annuity settlement options on the basis of male rates has been very controversial. Many companies use a three-year setback (that is, a woman's premium is the same as that of a man three years younger) to reflect the difference between male and female mortality when calculating life insurance gross premiums for permanent life insurance. However, annuity rates are usually based on a four- to five-year setback (a woman's monthly benefit is the same as that of a man four to five years older). Age setbacks for annuity settlement options will result in lower monthly benefits for females and age setbacks used in the calculations of life insurance gross premiums will result in lowered premium rates for females.[36] This use of different setbacks does not deal uniformly with the mortality rate of females. Where the setback is advantageous to women (by lowering premium costs), it is minimized; where it is disadvantageous to women (by lowering monthly benefits), it is maximized.

The *Wisconsin Statutes,* Section 206.181 (6), allow a setback for no more than three years when calculating premiums and present values for permanent life insurance.[37]

The National Association of Insurance Commissioners is investigating the possibility of a separate female mortality table on which rates would be calculated. This table would take into consideration reserves and cash values.[38] Currently, statutory reserve and cash value requirements are calculated as a function of the male mortality table. Until more research is done on unisex rating, using rates based on a separate female mortality table is a method for attaining a more realistic rate for females. It will eliminate the need to use setbacks on the basis of male rates.

### Automobile Insurance

Automobile insurance policies are composed of several parts: bodily injury liability, property damage liability, medical payments, uninsured motorist, collision, comprehensive, and emergency road service.[39]

Automobile insurance is not required in Wisconsin. However, you must be able to prove financial responsibility if involved in an accident. This means proof of ability to respond in damages for liability involving a motor vehicle in the amount of $15,000 per person, $30,000 per accident for bodily injury and $5000 for property damage.[40] If your assets are insufficient to meet these requirements, you must obtain an automobile liability insurance policy for at least these amounts, as this is the minimum coverage permitted under Wisconsin law.[41]

Medical payment coverage provides reimbursement, regardless of fault, up to the policy limits for medical, dental, chiropractic, and funeral expenses. Medical payment coverage of $1000 must be offered to all policyholders.[42]

Uninsured motorist coverage provides coverage for bodily injuries caused by an uninsured motorist or a hit-and-run driver. All policies must provide minimum uninsured motorist coverage of $15,000 per person and $30,000 per accident.[43]

Collision coverage pays, regardless of fault, for damage to your automobile caused by a collision or upset. Comprehensive coverage pays for damage to your automobile caused by theft, vandalism, or collision with a bird or animal.

In the past, persons were often denied coverage or placed in a substandard classification because of divorce or cohabitation living arrangements.[44] It is anticipated that Insurance 6.54, the administrative rule issued in 1976, will operate to prohibit these practices.

## CREDIT

In recent years state and federal legislation has been passed prohibiting discrimination in the granting or extension of credit on the basis of an applicant's sex or marital status.

Under the Wisconsin 1973 Equal Credit Act, a violation of the law is a criminal offense and any bank, savings and loan company, credit union, or retail store that violates the law may be fined up to $1000.[45] The district attorney must prosecute the case. A woman cannot hire a lawyer and go to court on her own. She may choose to file a complaint with one of the state agencies that regulate the various lending institutions, but at this time (1977) not all of them have adopted rules defining discriminatory credit practices.

All the agencies, however, will receive and process complaints. These are handled informally and on an individual basis. The agencies will write to the parties involved and attempt to clarify and resolve the situation.

Regulations have been promulgated under the federal Equal Credit Opportunity Act (ECOA)[46] that outline prohibited credit practices. Under them a creditor cannot

1. use a credit scoring system that reflects sex or marital status.[47]
2. refuse to allow a credit-worthy woman to open a separate account in her own name.[48]
3. require the signature of a spouse unless it is imposed without regard to sex or marital status on all similarly qualified applicants.[49]
4. discount income on the basis of sex or marital status or the fact that it is derived from part-time employment.[50]
5. request information about birth control practices or childbearing intentions.[51]
6. request information about a spouse or former spouse unless s/he will be permitted to use or is legally responsible for the account or if alimony, child support, and maintenance payments are relied on.[52]
7. terminate accounts or require reapplications because of a change in name or marital status unless there is evidence of an "inability or unwillingness to pay."[53]

A creditor must

1. consider alimony, child support, and maintenance payments as income "to the extent that such payments are likely to be consistently made."[54]
2. give the reasons, if so requested, if credit is denied or an account terminated.[55]
3. keep records of all credit applications for 15 months after the date a creditor gives the applicant notice of action on an application.[56]

Under an ECOA regulation, a married woman who has no income of her own can still establish her own credit history.[57] Joint accounts that were opened after November 1, 1976, must be listed in both the husband's and wife's name. For accounts opened prior to this date, creditors must comply with this ruling or send a written notice asking the account holders if they want the account reported in both names.

The ECOA is enforced by various federal administrative agencies. They will send copies of the act and regulations and attempt to answer specific questions involving rights under the law. They may also refer complainants to other agencies or district offices. Individual complaints are put on file and if a pattern of discrimination emerges, the agencies have the authority to force the lending institution to cease its discriminatory practices.[58] Under the federal law, an aggrieved applicant may sue a creditor in court for a violation of the act, either alone or in a class action with other applicants who have a similar complaint against the creditor.[59] The actual damages suffered by the applicants and punitive damages against the creditor can be collected. Also, an applicant may sue for injunctive relief to force the creditor to cease the alleged violations.

Unfortunately, the protection afforded by the regulations in their entirety apply only to consumer or retail credit; only limited provisions apply to other types of credit.[60] Business credit is exempted from the prohibition against inquiry as to marital status, the requirement of the notice of the act in applications, and the record-keeping provision. Utilities credit is also

exempted from the record-keeping provision. Securities credit extended by a broker to a customer is subject to requirements imposed by the Securities and Exchange Commission, which mandates certain information be collected and is thus exempt from several provisions. Incidental credit which is extended as a service to customers, for example, by grocers and doctors, and does not arise from the use of a credit card is exempt from the record-keeping provision and certain prohibitions against requesting information about a spouse, discounting income, requiring reapplication, or termination upon a change in name or marital status, and others.

If a woman feels she has been discriminated against in a credit transaction, she should first write to the institution or bank that refused to extend or terminated her credit and explain in detail why she thinks she is qualified. She should ask the lending institution to put in writing the reasons for its action. If the answer she receives is unsatisfactory, she should then contact the clearing center that has recently been established in the Office of Consumer Protection of the Wisconsin Department of Justice, whose address is in the Directory of Services at the back of this handbook. The staff there will assist the complainant in her action and direct her to the appropriate state or federal agency.

# 10 CRIMINAL LAW

The absence of women throughout the criminal justice system is startling. Only in the past several years have women begun to run for public office and to be elected in any numbers, and while these numbers are still pathetically few, they do at least represent conscious growth. This underrepresentation of women is more severe in the courts and law enforcement agencies than it is in legislatures. With the dramatic increase of women enrolled in law schools, the expansion of feminist law firms, and affirmative action requirements in the employment of women in law enforcement, the gross imbalance is beginning to be remedied. The recent appointment of Shirley S. Abrahamson as Wisconsin's first female supreme court justice was an important step in correcting women's under-representation in the criminal justice system.

## WOMEN AS OFFENDERS

Historically, relatively few women have engaged in or been apprehended for criminal activity. In consequence, efforts at prison reform and prisoner rehabilitation have been directed at the predominantly male prison population, and women prisoners, segregated in separate facilities, have been virtually ignored. Today, the proportion of female offenders is increasing, but their problems still receive minimal attention. Traditional attitudes toward women are reflected in the treatment of women offenders by the criminal justice system. Because women are presumed and expected to be law-abiding and nonviolent, they are sometimes treated more leniently by the courts than men are treated. These same stereotypes, however, have more often led to the belief that a woman who deviates from the expected norm must be depraved and immoral and deserves either the maximum penalty or an indeterminate sentence that is to continue until she is acceptably rehabilitated.

### The Woman Offender

Only one in seven arrested persons is female.[1] This disproportionately low percentage of female offenders becomes even more marked as arrestees move through the criminal justice process: only 1 in 22 persons convicted of a crime and sentenced to prison is female.[2] Authorities on the criminal justice system have suggested several reasons for the surprisingly small number of women charged with and convicted of crimes. One is that the types of crimes which many women commit—blackmail, shoplifting, child abuse—are difficult to detect.[3] Another is that law enforcement officials' attitudes toward women lead to disparate treatment of male and female offenders. Men are considered more dangerous and are treated accordingly.[4] Correspondingly, feelings of chivalry and paternalism result in more lenient treatment of women.[5]

Women who are arrested generally commit types of crimes different from those committed by male offenders. Women are likely to engage in larceny, forgery, fraud, embezzlement, and other property crimes. In addition, women are often arrested for sexual activity and charged with

prostitution or vagrancy. Men, on the other hand, are arrested for robbery, burglary, auto theft, drunk driving, vandalism, weapons offenses, and rape—generally more physically violent crimes.[6]

The average woman prisoner is a high school dropout[7] who has the responsibility of caring for minor children.[8] Two out of three of the women suffer from one or more chronic health problems, including sickle-cell anemia, cancer, arthritis, diabetes, and other serious physical disorders, often complicated by a psychiatric problem as well.[9] Ill health and lack of job skills make it virtually impossible for these women to find gainful employment. Nearly 1 in 3 received public assistance prior to incarceration.[10] Thus, it seems clear that many women offenders are driven to criminal activity by desperate economic circumstances and the need to provide for their children.

**Juries**

The jury is the seat of substantial power in the criminal justice system. In theory it is the "voice of the people"; in practice, however, women historically have been excluded from jury service, either through outright statutory disqualification or through automatic exemptions relieving women—or at least mothers of young children—from the responsibility of jury duty.[11] Such exemptions or exclusions generally have resulted in substantial underrepresentation of women on juries, denying litigants the constitutional right to a jury drawn from a cross section of the community and, more broadly, denying the equal protection of the laws to women in general.

Wisconsin law appears to be nondiscriminatory with regard to jury selection.[12] Qualifications and exemptions are sex-neutral.[13] A judge may exclude from the jury panel or excuse from jury service any person, based on a finding of "good cause"[14] or "undue hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice."[15] These standards appear to be neutral on their face and in their impact. However, their application depends on individual judges, some of whom may still excuse women jurors on an almost automatic basis.

**Sentencing**

Under present Wisconsin law, women and men are subject to the same sentencing for the same crimes.[16] However, only women are eligible for parole—unless they have been convicted for a crime requiring a minimum mandatory sentence of 20 years or life—immediately upon incarceration if they have secured suitable employment and have satisfied the Bureau of Corrections of the Department of Health and Social Services that they will be "law-abiding, temperate, honest, and industrious."[17]

So far, laws providing for unequal sentences for men and women convicted of the same offense have been struck down in Connecticut, Pennsylvania, and New Jersey on the grounds that they violate the Fourteenth Amendment guarantee of equal protection. Those laws had required maximum sentences for women convicted of a criminal offense.

In the past, women offenders in Wisconsin have been able to take advantage of Huber Law privileges (daytime release from jail) for in-home

family and household care as well as for paid employment, while male offenders have had the privilege only for purposes of paid employment. The Wisconsin Equal Rights Act extended to men the right to use Huber Law privileges for housework and child care."

### Correctional Institutions

Much lip service has been given but little progress has been made in counseling, education, and training of inmates in all correctional institutions. County jails, which house individuals whose sentence is one year or less, are usually totally devoid of such programs, and the state institutions all too often continue to offer outmoded, virtually useless training. For women the "training" emphasis is primarily on scrubbing, cleaning, and sewing, and whatever occupational training does exist is usually preparation for such traditional fields as cosmetology. (Since cosmetologists must be licensed to practice, and since a criminal record is cause for denial of a license in Wisconsin, this training may be wasted.) Currently, efforts are being made to expand the range of skilled trades for women and to arrange continuity of training after release. The need to train institutional staff personnel is often more urgent than inmate education and is imperative for more enlightened institutions.

Alternative community treatment facilities are being developed for offenders—less punitive, closer to families, less costly to the state, and within the framework of a normal society rather than in remote isolation with only other offenders. Horizons is a halfway house in Milwaukee for former women offenders. A Metro center (also in Milwaukee) for women during their final weeks of incarceration has been funded by the legislature and will attempt to provide more realistic prerelease preparation. Citizen groups as well as professionals are involved in these efforts toward more humane treatment in the hope it will bring more-effective results.

Wisconsin has converted its state Home for Women at Taycheedah into a sex-integrated facility. While in theory sex-integrated institutions should provide advantages for both male and female inmates, many people believe that the move has not been as beneficial to women as was anticipated. The prison is now badly overcrowded; as a result, minimum-security and medium-security women inmates have been grouped together, requiring increased security measures and less freedom of movement for the minimum-security inmates affected. Overcrowding has affected the women adversely in another way: They are housed two to four to a room, but each male inmate has a single room. Some efforts have been made to allow the women and men to share activities such as religious services, classes, sports activities, and even an occasional dance. However, in many ways the programs for male and female inmates remain essentially separate. Vocational classes, while open to inmates of either sex, offer instruction in traditional "women's work" (e.g., cosmetology, clothing), and male inmates generally do not participate. Inmates of different sexes may not sit together at movies or eat together. Educational and training opportunities for women have not increased as a result of sex-integrating the facility. Many men (38 percent) have off-

grounds employment, and, in fact, are selected for residence there partly on that basis. Because of the small prisoner population at Taycheedah and because so many men leave the grounds daily, educational and training programs available at other institutions are still lacking at Taycheedah. A recent grant of $250,000 from the Wisconsin Council on Criminal Justice has enabled some women inmates (26 percent) to go off grounds for educational or employment purposes, but nearly three quarters of the women remain in the institution each day. The needs of these women might be better served if sex integration of prisons were accomplished by moving women into a formerly all-male institution where they could take advantage of the extensive rehabilitation and training programs available, rather than moving men who work off grounds into a women's prison with an underdeveloped on-grounds program. In view of these facts, it seems fair to say that the concept of sex-integrated prisons has not yet received a fair test in Wisconsin.[19]

**Female Juvenile Offenders**

Females under the age of 18 come into contact with law enforcement officials more often than do their adult counterparts. Nationwide, they comprise nearly a fourth of the juvenile population in all types of juvenile holding facilities, and a third of the juvenile population held in pretrial detention.[20] Although delinquency has been considered a "boys' problem," girls now account for 26 percent of the delinquency cases, and the number of cases involving girls' misconduct is increasing at a rate greater than the number of boys' cases. Between 1965 and 1972, girls' delinquency cases increased by 101 percent and boys' cases increased by 49 percent.[21] Police arrest data also indicate that the rate of girls' involvement in criminal activity is increasing. Between 1960 and 1972, arrests of girls under age 18 increased 388 percent for violent crimes and 301 percent for property crimes; the figures for boys were 203 percent and 71 percent increases, respectively.[22]

One reason for this dramatic increase in arrests of girls for criminal behavior is the increase in arrests for drug use among young women. Twenty percent of the criminal charges filed against young women in 1971 involved drug offenses. For boys, the figure was slightly under 8 percent.[23] Additionally, the increase in drug use is directly linked to the increase in other crimes, as the user of hard drugs often turns to illegal activity to finance a drug habit.

In 1976 the state legislature passed the Youthful Offenders Act, which provides a specialized correctional program as an alternative to the usual criminal procedures for persons who are under 21 years of age when they commit a crime. Youthful offenders may be put on probation or committed to the Department of Health and Social Services. Under the act, a new facility for detention of female juveniles has been established in a wing of the Mendota Mental Health Institute. This facility, cramped and understaffed, is a replacement for the School for Girls at Oregon which, before the legislature closed it in an economy move, was considered by many to be a model institution.

Despite the increase in criminal behavior among young women, most girls come into the juvenile justice system because of *status offenses*—activity which would not be criminal if they were adults. Truancy, running away from home, and being uncontrollable (which often means engaging in sexual activity of which their parents disapprove) are the most common examples of status offenses. Nationwide, in 1971, 70 percent of the girls detained were held on status offenses; only 7 percent were held on felony charges. In contrast, only 23 percent of the boys detained were held on status offenses, and 49 percent were held on felony charges.[24] The most recent Wisconsin statistics are similar: In 1974, only 32 percent of male detentions were for status offenses, while nearly twice as many female detentions—61 percent—were for status offenses.[25] The Department of Health and Social Services' report on juvenile detention explains the treatment of female offenders as follows:

> While apprehensions of females are less frequent, girls are more likely to be detained once they are apprehended and usually on relatively minor charges, probably with the rationale of keeping the innocent girl off the streets, and, thus, out of trouble.[26]

While keeping girls "out of trouble" is a commendable goal, it must be remembered that these girls are housed in county jail facilities in all counties except Dane, Milwaukee, and Racine.[27] Such facilities are rarely protective or rehabilitative.

This pattern of holding girls for status offenses provides another major reason for the increasing percentage of juvenile cases involving female offenders. Societal change in the perception of appropriate sex roles has led to more assertiveness and independence in young women, and thus to more sexual and social behavior which is considered deviant. Where parents and the juvenile justice system are likely to tolerate truancy, sexual activity, and disobedience from a male teenager—"He's sowing his wild oats" or "Boys will be boys"—girls generally are allowed less latitude. Thus, most girls having contact with the juvenile justice system are there because of behavior which is acceptable for males but not for females. As young women reject sexual stereotypes of "proper" behavior and assert their independence, they increasingly run into trouble at home, at school, and with the juvenile justice system.

### Prostitution

The sexual double standard, which creates difficulties for women throughout the criminal justice system, is nowhere more blatant than in the system's approach to the crime of prostitution. Prostitution is an example of a victimless crime—where the activity, though prohibited by law, is desired by and mutually agreeable to the participants and no injury occurs. If there is a victim in the business of selling sexual services, it is the prostitute herself, who is exposed to venereal disease and often is exploited by her pimp. The legal system, however, deals much more harshly with women who are involved in prostitution than with men who are also involved.

Wisconsin law, like that of many states, defines prostitution as an offense that can be committed only be females.[28] The Wisconsin Supreme Court recently upheld this statute, saying that classification on the basis of sex is proper in this instance.[29] Thus, male prostitutes and their patrons are not penalized. While a man who patronizes a (female) prostitute is guilty only of a misdemeanor, subject to up to three months in prison and a $100 fine,[30] the prostitute will be charged with a felony and may be imprisoned for a year and fined $500. A pimp or panderer, if apprehended, is also subject only to misdemeanor penalties: up to six months imprisonment and a $200 fine.[31] However, if it can be proved that the panderer received compensation from the prostitute's earnings, the maximum penalty increases to a $5000 fine and ten years imprisonment.[32]

Generally, police activity concerning prostitution is limited to apprehension of prostitutes, with little energy directed toward enforcement of the law against patrons or panderers. When the Washington, D.C., police instituted a program of arresting patrons in 1970, a great uproar ensued and the idea was quickly dropped.

Three methods of achieving equity in our prostitution laws have been proposed. One is simple equalization of the present statutes, so that both males and females could be convicted for prostitution as well as for patronizing prostitutes. This method might also include making the patron equally criminally liable, with the same penalty applying to both patron and prostitute.

An alternative is to legalize prostitution by requiring prostitutes to be regulated and licensed. Any licensing program which is developed should provide that the prostitutes receive regular health checks and keep all the money they earn. Such safeguards would decrease the victimization of prostitutes.

A third suggestion is to decriminalize prostitution by repealing all laws which prohibit sex for money between consenting adults.

Serious study of the problem needs to be undertaken before a choice of the alternatives is made. But it seems clear that reform of some type is badly needed. In a misdirected attempt to protect the morals of society, women are branded as criminals and are victimized both by their criminal activity and by the criminal justice system. Police time spent in closing down houses of prostitution is costly and ineffective and detracts from more essential law enforcement activity. Who, if anyone, needs to be protected by prostitution laws? The answer to this question will point the way toward reasoned reform.

## WOMEN AS VICTIMS OF CRIME

If discriminatory treatment of women offenders is difficult to countenance, discriminatory treatment of female victims of crime is equally intolerable. Women have become increasingly concerned with two major areas of crime in which the victim is generally female: sexual assault and physical abuse of a spouse.

## Sexual Assault

Traditionally—and in many states, even today—the law of rape has exemplified the contempt felt throughout the criminal justice system for female victims of crime. Operating under the theory that a victim really wanted to be raped and that the offender, carried away by passion, wasn't really so terribly wrong, law enforcement officials, judges, and juries have concentrated on destroying the victim's reputation and protecting the rapist from allegedly false accusations. Victims of rape have often complained that they are assaulted twice: first by the rapist and second by the criminal justice system when they pursue the case.

In consequence, most victims of rape have not reported the crime to the police.[33] Even among reported rapes, the rate of prosecution is low and the rate of conviction even lower.[34] Our society has considered rape neither a terribly significant nor a terribly serious crime, when in fact it is both.

In the early 1970s, women began to form support groups to help each other through the legal and personal turmoil which is the aftermath of rape. At the same time, a movement developed for the revision of discriminatory rape laws. Criticisms of typical rape laws included the following:

1. Only females could be victims of rape, and penile penetration was required. Thus, homosexual rape and bizarre forms of sexual brutality went unpunished.
2. Evidence of a victim's prior sexual conduct could be introduced at the trial to imply that she consented to the alleged rape and to reduce her credibility, while evidence of the rapist's past sexual behavior was inadmissible.
3. The maximum sentence for a convicted rapist—30 years in Wisconsin—was rarely given, but the potential severity of the penalty made juries reluctant to find a defendant guilty.

In a landmark piece of legislation, the Wisconsin Legislature in 1976 enacted a new statute designed to correct these shortcomings.[35] The new law repealed the old rape statute and substituted a comprehensive statute on sexual assault. The crime was removed from the chapter on sex offenses and placed instead with other crimes of assault.

The new law covers homosexual rape and sexual assault committed by a woman on a man. Prohibited conduct is not limited to intercourse and covers a wide range of unwelcome sexual contact.[36]

The law severely limits the admission at trial of evidence concerning the victim's reputation and sexual conduct. Such evidence may be introduced only under very limited circumstances, and the law requires that the judge rule on the admissibility of the evidence in a private hearing before the trial begins.[37]

Under the new law, there are four degrees of sexual assault. First-degree, the most serious form of sexual assault, includes sexual intercourse or contact accomplished without consent, where the victim becomes pregnant or is seriously injured, where the assailant is armed, in a gang rape, or where the victim is 12 years of age or younger. The penalty is set at a maximum of 15 years imprisonment or a $15,000 fine, or both.[38]

Second-degree sexual assault includes sexual contact or intercourse accomplished without consent, where the victim is injured, where force or violence is used or threatened even if no injury results, where the victim is mentally ill or deficient or unconscious and the assailant knows of the victim's condition, or where the victim is older than 12 years of age but younger than 18. A child under 15 years of age is by law incapable of consent; a person 15, 16, or 17 years old is presumed incapable of consent, but this presumption can be rebutted by evidence to the contrary. The penalty for second-degree sexual assault is a maximum of 10 years imprisonment or a $10,000 fine, or both.[39]

Third-degree sexual assault is sexual intercourse accomplished without consent where no aggravating factors are present. The maximum penalty is 5 years imprisonment or a $5000 fine, or both.[40] Fourth-degree sexual assault is sexual contact without consent where no aggravating factors are present. This is a misdemeanor charge with a maximum penalty of a $500 fine or 1 year imprisonment, or both.[41]

This law, which treats rape as a crime of assault and which focuses attention on the nature of coercion employed by the assailant rather than on the degree of resistance shown by the victim, is a tremendous improvement in an important area and was accomplished in a remarkably short time by a well-organized lobbying group, the Wisconsin Task Force of Rape. This is an excellent example of the results women can achieve when fully mobilized to fight injustices.

One problem still remaining under the new law is that rape within marriage is not prohibited. Section 940.225 (6) of the *Wisconsin Statutes* reads:

> NO PROSECUTION OF SPOUSE. No person may be prosecuted under this section if the complainant is his or her legal spouse, unless the parties are living apart and one of them has filed for an annulment, legal separation or divorce.

As social awareness develops of the extent and severity of physical abuse that many husbands routinely inflict on their wives, perhaps this statute will be repealed.

A victim of sexual assault should report the fact to the police and should seek medical attention as soon as possible. Taking these steps does not commit the victim to filing criminal charges or going to trial. It does, however, preserve the evidence and keeps a record of the case in the event that s/he does want to pursue it. Immediately after the rape, a victim should call her/his physician or go to a hospital emergency room. It is important to take this step immediately in order to preserve the evidence and to safeguard the victim's health. S/he will be treated for any injury suffered and, if female, examined for possible pregnancy. Hospital personnel will also perform a number of tests to establish evidence of the assault. If appropriate, they will do a semen check which, if done within four hours of the attack, may provide positive proof of sexual intercourse. They will also do a pubic hair combing and collect fingernail scrapings for other evidence of the identity of the assailant or of a struggle.

The victim should also report the incident to the police. An early police report is essential if s/he wants the assailant prosecuted, since law enforcement officials are more likely to believe a prompt report. If the victim eventually decides not to prosecute, s/he can refuse to testify; the state cannot continue the case without her/his participation, since s/he is the major witness.

The victim may have a friend or relative present during the police interview. Many police departments in the larger cities have policewomen conduct the initial interview with female victims.

While the victim can stop the criminal process, s/he cannot initiate it, be represented by her/his own attorney, or recover personal damages. Sexual assault is a crime against the state and must be prosecuted by the district attorney. A victim may bring an assault and battery action if s/he wants personal damages or if the district attorney refuses to prosecute. In an assault and battery action, however, s/he must hire and pay a private attorney.

### Physical Abuse of a Spouse

Under the old English common law, a man could beat his wife with a stick as thick as his thumb. This historical acceptability of wife beating is reflected in the prevalence of spouse abuse—particularly wife abuse—today, and in social attitudes toward such abuse. One out of eight of the 19,500 murders in the United States in 1973 involved a spouse killing a spouse, according to FBI statistics. In the vast majority of these cases of family homicide, police had previously been called to the home because of physical violence.[42] When an abusive husband gets carried away, or when a beaten wife retaliates with a gun or knife, the results are often fatal. In the state of New York, where the family court handles spouse abuse cases, wife abuse complaints filed in 1973 totalled more than 14,000, three times the number of reported rapes.[43]

Marital violence sometimes leads to court action and sometimes to murder, but for an astounding number of women it is simply a way of life. Assaulted wives have felt that their plight was uncommon, shameful, and probably due to their own shortcomings. Abusive husbands, often belligerent because of alcohol consumption, have believed that "she deserved a little roughing up," or have convinced themselves that an apology and a makeup kiss can undo the harm. In Wisconsin and most other states, an abused wife has no recourse but to charge her husband with the criminal offense of assault and battery. The legal system is at best indifferent, and at worst hostile, to pleas for protection. Police are reluctant to charge a wife beater because, statistically speaking, most women eventually drop the charge. Judges are unlikely to imprison an abusive husband, since the family would be deprived of his income. An in one recent Virginia case, a wife's plea for divorce on the ground of physical cruelty was denied because she had introduced evidence of only one physical attack; since she had not proved that the violence would likely be repeated, and since the attack was not "so severe and atrocious as to endanger her life," the court found insufficient basis for granting the divorce.[44]

In our culture, attitudes toward abused wives and rape victims are similar. As the rape victim is believed to enjoy her ordeal, so are battered women supposed to enjoy being beaten. As the rape victim is accused of seducing her assailant, so the abused wife is blamed for provoking the attack—even though she may be asleep when assaulted. As "nice girls" are supposedly never raped, so it is incorrectly assumed that the battered women is a lower-class phenomenon and her problems are not relevant to "middle America." In fact, however, it is a crime that cuts across class, occupational, and educational lines. Women who charge men with either rape or wife abuse are often believed to be vindictive and unstable. While in Wisconsin we have made great strides toward protection of the rape victim, the battered wife's plight remains virtually ignored. It is significant that our new sexual assault law still permits marital rape.

Wife beating has gone unchallenged, in part, because battered women are reluctant to speak out. Humiliated by their husbands, they dread the further humiliation of public knowledge. Socialized to believe that it is their duty to make their husbands happy, they feel guilty and responsible for the attacks. Economically dependent on the husbands who abuse them, and keenly aware of the difficulties in extracting child support and alimony payments from uncooperative husbands, they often dismiss the possibility of divorce as impractical.

The criminal justice system is not adequately equipped to deal with the problem of spouse abuse. Prison sentences and fines are often not an appropriate response; currently, Wisconsin law offers no alternatives. The creation of a civil action in family court, where more flexible approaches could be offered—such as psychiatric counseling, help with drinking problems, temporary refuge for the battered spouse, and financial counseling—would be a step in the right direction. Additionally, enforcement of child support and alimony orders would help to free many abused women from economic bondage and make it possible for them to leave their husbands.

An old English proverb states, "A spaniel, a woman, and a walnut tree—the more they're beaten, the better they be." It is time this barbaric philosophy was repudiated in this society. It is time to tell men everywhere that they do not have a "right" to beat their wives, and that this antisocial behavior will no longer be tolerated.

# 11 ECONOMICALLY DISADVANTAGED WOMEN

Welfare is a women's issue. Because of women's status, dependency in marriage, limited earning power in the job market, and responsibilities to minor children, large numbers of women alone or women and their children live in poverty. Women, their children, and the elderly (most of whom are female) constitute the majority of the 24.3 million Americans—one in every five persons in our population—officially classified as poor in 1975.

Congress has legislated certain programs to meet the needs of the poor. Access to these programs is a legal right. Among the rights of the economically disadvantaged in the United States are the right to receive welfare payments, free medical care, food stamps, free or low-cost school lunches, and some free legal services.

Women from middle- and upper-class backgrounds often try to distance themselves from women on welfare. Our society tends to condemn the welfare recipient, accusing her/him of being a lazy parasite who feeds off charity doled out to the undeserving by people who work hard for what they have. In fact, public assistance programs are part of a spectrum of tax-supported programs designed to help members of society who find themselves in financial difficulties. These programs include farm subsidies, oil depletion allowances, tax write-offs for capital losses, government-funded scholarship programs, and Wisconsin's payment of medical costs for persons suffering from kidney failure and other serious illnesses. Additionally, taxes pay for other programs and services that benefit the entire community—free public schools, national parks and forests, local parks and playgrounds, and free garbage collection, to name just a few. Poor people support all of these programs. Even if they pay little or no income tax, they still pay sales taxes, property taxes (through rent or ownership), inheritance taxes, and excise taxes on gasoline, liquor, cigarettes, the telephone, and utilities. Often, taxes paid by poor people are a disproportionately high percentage of their income, while subsidies and other programs for them are far less comprehensive and less well financed than the government-supported aid to more affluent individuals and businesses.

As Johnnie Tillmon of the National Welfare Rights Organization says: "Welfare is like a traffic accident: It can happen to anybody. But it especially happens to women."[1] Only a breadwinning husband stands between many women and welfare assistance. Women who lack job skills and experience or who have young or disabled children to care for have few options when the breadwinner dies or leaves. An unpublished study by the Wisconsin Commission on the Status of Women indicated that in Dane County, approximately one third of the families entitled to child support payments receive public assistance.[2] A study done in 1974 by the federal government's General Accounting Office showed that child support orders are inadequate and payments are rarely made; nationally, 27 percent of the children receiving AFDC are covered by support orders or agreements.[3] These families receive

public assistance not because of their own wrongdoing but because an ex-spouse is unwilling to comply with support obligations.

The need for welfare services and payments would fall dramatically if public policy were addressed to eradication of the basic causes of poverty. Throughout this handbook many remedial steps have been discussed that would improve the economic status of women and make women less vulnerable. These remedies are wide-ranging and cover education and counseling, job training and guaranteed job opportunities, adequate income and reasonable working conditions, economic equity in divorce, available child care and homemaking assistance, adequate health and disability insurance, access to family planning services, nondiscrimination in housing and public accommodations, and equal retirement and Social Security benefits. These and other similar measures would go a long way toward increasing the dignity and independence of those who now constitute the primary bulk of welfare recipients.

The term *welfare* generally refers to financial assistance to persons who are without the means sufficient to provide themselves with food, clothing, and shelter. More specifically, welfare includes several different programs, each aimed at a different group of poor persons. These programs are AFDC, SSI, and general relief. In addition to the programs of financial assistance, there are other programs. Medical Assistance (MA) is a health insurance program and Food Stamps is a program meant to increase a household's food-buying power. Social services are also available to meet a variety of emergency and continuing needs.

## AID TO FAMILIES WITH DEPENDENT CHILDREN

AFDC is a joint federal-state program of financial assistance for dependent and needy children under 18 who are living in the home of a relative.[4] AFDC also usually provides financial assistance to the relative with whom an eligible child is living. A dependent child is one who is deprived of parental support or care due to the death, absence, or incapacitation of either parent or due to the unemployment of her/his father. In order to be considered needy, a child or caretaker relative must have budgetable (net) income below the welfare allowance established by the Wisconsin Legislature and may not have available resources (e.g., money in the bank, stocks, and some kinds of personal property) worth more than the resource limit. (One car, the home in which the needy person is living, and household furnishing are not counted as resources.) Because the welfare allowance per family size is subject to change, applicants should contact their local welfare or social service department for the current figures. Under some circumstances, a needy woman who is at least three-months pregnant is eligible for AFDC as a family of one.

There are several other eligibility requirements in the AFDC program. The child's relative must assign the right to receive child support to the state of Wisconsin and must cooperate in obtaining support payments.[5] This might include providing the name and location of the absent father of a child born outside of marriage. Married women cannot be required to bring any legal

action against their absent husbands,[6] but they may be required to cooperate with law enforcement officials.[7] If the caretaker relative refuses to assign support or to cooperate in obtaining support, the relative cannot receive assistance for herself/himself. However, the child may still be eligible.[8]

Some relatives and older children are required to register for work through the Work Incentive Program (WIN).[9] Anyone who is not exempt from the WIN requirement and who refuses to register with or is terminated from the WIN program is not eligible to receive AFDC for at least 90 days. Those who are exempt from the WIN requirement include children under 16 years of age, children aged 16 or older who are in school, caretaker relatives of children under age 6, and persons who are incapacitated or ill.

Applications for AFDC are made at the social services or welfare department in the county in which the applicant lives. Anyone who wants to apply for AFDC or for any of the other welfare programs must be given the opportunity to do so. The applicant will be requested to provide verification of eligibility factors. Examples of the kinds of documentation requested are paycheck stubs, Social Security award letters, savings account passbooks, and birth certificates. An applicant who does not have a Social Security card will be required to apply for one. The AFDC application cannot be denied simply because the applicant is powerless to obtain the documentation requested. This is prohibited by *Grandberry* v. *Schmidt*,[10] a case brought in federal court by AFDC applicants.

The applicant must receive either a check or a written denial within 30 days of the date of application.[11] Persons who are found to be eligible must receive AFDC back to the first of the month in which the eligibility determination is made if all eligibility requirements were met during the month. Therefore, an eligible applicant who applies on May 30 and who met the eligibility requirements for the entire month of May must receive assistance for May and June, and the check must be issued before June 30. Persons remain eligible until they no longer meet the eligibility requirements or voluntarily choose to withdraw from the program.

Persons who are eligible for AFDC are also eligible for MA and Food Stamps. (If some members of an AFDC recipient's household are not receiving AFDC, the household may have to make a separate application for Food Stamps.)

In Wisconsin, recipients are paid 91 percent of the standard of need. In October 1975, the monthly payment for a mother and two children was just short of $294.00.

## SUPPLEMENTAL SECURITY INCOME

SSI is a federal program of financial assistance for needy persons who are blind, disabled, or aged 65 or older.[12] Blindness and disability are determined according to particular standards and must be proved by medical evidence. Need is defined as having income less than the applicable SSI payment level and resources valued at less than $1500 for individuals or $2250 for couples. The SSI payment levels as of January 1, 1976, were $234 per month for

individuals and $351 per month for couples. Certain items are not included as resources: a person's home valued at no more than $25,000, an automobile worth no more than $1200, and household furnishings.

Applications are made at the nearest Social Security office. Eligibility goes back to the first of the month in which application is made. There is no time limit within which the eligibility determination must be made; often applications based on disability and blindness take months to process. Persons remain eligible until they no longer meet the eligibility requirements or voluntarily withdraw from the program. SSI recipients automatically receive Medical Assistance. They are also eligible for Food Stamps, but must apply.

## GENERAL RELIEF

General relief (or general assistance) is financial assistance provided by counties and/or municipalities throughout the state. Needy persons who do not meet the requirements of AFDC or SSI may be eligible for general relief. Amounts of assistance and determinations regarding whether an applicant is needy vary among the counties and municipalities throughout the state.

Needy persons should apply in the county or municipality in which they are living; there is no requirement of residence for any length of time. In counties that have a countywide general relief program, assistance should be requested at the county welfare or social services department. In other counties, each town or municipality is responsible for providing assistance; if there is no municipal welfare office, the town chairperson or mayor should be contacted.

## MEDICAL ASSISTANCE

MA is a joint federal-state program administered by the counties, that pays health care providers (e.g., doctors, hospitals, dentists, and pharmacists) for their services. It is also called Title XIX. All AFDC and SSI recipients are automatically eligible for MA. Other persons must apply at their county welfare or social service department.

In order to be eligible, a person must have one of the following social characteristics: be under 21, be 65 or older, be disabled or blind of any age, or be the caretaker relative of a child under 18 in a situation that would meet the AFDC definition of dependent child (this category includes a woman who is at least three-months pregnant). In addition to meeting one of the social requirements, a person must also be needy. Need is defined as having budgetable (net) annual income below the income limits per family size. Applicants whose annual income exceeds the limit may still be eligible if they have recently incurred medical expenses that would bring their net income below the limit. There is also a limit on the amount of resources that a person or family may have. The resource limits are $1750 for one person, $3500 for two persons, and $300 for each additional person. Resources do not include the value of the home in which a person is living, one car, and household furnishings.

Eligibility for MA must be determined within 30 days of the date of application. However, if medical documentation of disability or incapacitation is required, the application decision can take up to 60 days. Eligibility for MA can be retroactive back to three months prior to the month of application if all eligibility requirements were met in the preceding months. This is a very important provision for persons who are hit with an unexpected medical expense prior to applying for MA. MA certification continues for six months.

## FOOD STAMPS

Food Stamps is a federal program. Eligible households purchase food coupons which can be used in place of cash to buy food items at grocery stores. Eligibility standards include nonfinancial as well as financial criteria. Nonfinancial requirements include access to cooking facilities, residency (registered aliens are eligible), and registering for work at a Job Service district office. Financial criteria include limits on resources (such as savings accounts, stocks and bonds, and vehicles) after expenses such as housing, utilities, taxes, child care, and medical costs are taken into account.

The number of food stamps a household can purchase each month is determined according to the number of persons in the household, but purchase price varies among households of the same size according to the amount of net income a household has. Since the monthly purchase price may be quite large, households may buy one half or one fourth of their monthly food stamps at different times during the month.

The application for Food Stamps must be processed within 30 days of the date of application. Households may be certified as eligible for one month or for longer periods of time, up to one year. Only households with fluctuating income should be required to make a new application each month.

## DUE PROCESS RIGHTS: AFDC, MA, FOOD STAMPS

The applicant who is denied AFDC, MA, or Food Stamps and the recipient whose benefits are reduced, suspended, terminated, or otherwise adversely affected must receive a written notice of the reason for the action. Applicants must receive the notice within 30 days of the date of application; recipients must be sent a notice at least 10 days prior to the effective date of the intended action. The notice must explain the reason for the action and must advise the applicant or recipient of her/his right to a fair hearing and of how to request one.

A fair hearing may be requested by writing to the Department of Health and Social Services, whose address is in the Directory of Services at the back of this handbook under the heading "Child Care." In situations of application denials, the hearing request must be received by the Department of Health and Social Services within 60 days of the denial.

Recipients of AFDC, MA, or Food Stamps who are notified of an intended adverse action and who wish to appeal should file their appeal as

quickly as possible in order to preserve their right to continuing assistance. If a recipient's hearing request is received by the Department of Health and Social Services before the effective date of the action or within 15 days after the effective date, the department will order that assistance continue unchanged until the hearing is held. Without the right to continuing assistance, the county welfare or social services department could reduce, suspend, or terminate the assistance of an eligible recipient who would then be without the means to survive until the hearing decision months later.

The applicant/recipient has the right to be accompanied and represented by a person (lawyer or nonlawyer) of her/his choosing in all interviews or negotiations and at any fair hearings. Prior to a fair hearing, the applicant/recipient and/or the representative have the right to examine all relevant evidence in the case file.

Fair hearings are conducted by a lawyer employed by the Department of Health and Social Services. The hearing examiner will decide if the county welfare or social services department followed the program regulations. The department issues a written decision. Federal law requires that a decision regarding AFDC or MA be made within 90 days of the date of the hearing request; in the Food Stamp program there is a 60-day requirement.

## DUE PROCESS RIGHTS: SSI

Applicants and recipients of SSI must be sent a written notice of any action affecting their eligibility. The notice must include a statement of the reason for the action and an explanation of appeal rights. An appeal can be requested by calling or writing to the Social Security office.

SSI appeals are essentially a two-step process. The first level of appeal is the reconsideration. The second level is the more formal administrative hearing. A reconsideration must be requested within 60 days of receipt of the initial notice. An administrative hearing must be requested within 60 days of receipt of the reconsideration decision.

An SSI recipient, like an AFDC, MA, or Food Stamp recipient, has a right to continuing assistance until the reconsideration decision. The reconsideration must be requested within ten days in order to have assistance continued. However, if the reconsideration decision is unfavorable, the proposed action will take effect prior to the administrative hearing.

The SSI applicant/recipient has the right to be represented. The representative need not be a lawyer, but a nonlawyer must submit a written Authorization of Representation signed by the applicant/recipient. With the exception of some medical evidence, the applicant/recipient and/or representative have the right to see the Social Security file.

## DUE PROCESS RIGHTS: GENERAL RELIEF

General relief applicants and recipients have the same rights as other welfare applicants and recipients to written, advance notice that includes the reason for the adverse action, a hearing with an opportunity to appear and present evidence, a written hearing decision, and the right to be represented.[13]

However, a number of local general relief programs throughout Wisconsin not only have no organized appeals process but do not even have written eligibility standards available to the public. As a result, on any general relief applicants and recipients are regularly denied their rights.

## SOCIAL SERVICES

Wisconsin maintains a program of social services financed through the federal Title XX program.[14] A variety of services are available to welfare recipients and needy nonrecipients. The types of services available include day care for the children of employed persons, housekeeping services, emergency child care, and counseling.

Anyone who wishes to apply must be allowed to complete a written application at the county welfare or social services department. Social services applicants and recipients have the same rights to written advance notice and a fair hearing as AFDC, MA, and Food Stamp applicants/recipients have.

## FREE SCHOOL LUNCHES

If a school district receives any money under the School Lunch Act, it must provide school lunches for all the children in the district. Under the law, all children from families below specified minimum income levels must get a free lunch or a reduced-cost lunch that cannot cost more than 20 cents.

Every fall the school must send every parent a notice explaining the children's rights to school lunches and how a parent can apply. Eligibility for free or reduced-cost lunches is determined by the parent's declaration of income. The names of children must be confidential and they must not be singled out in any way and labeled as receiving free or low-cost lunches. As with other programs, a parent who has a complaint can request a hearing about this right of children to receive free or low-cost school lunches.

NOTE: While we have done our best to provide accurate and up-to-date information, regulations in this area are revised frequently and consequently some of the information in this chapter may not be current at the time you read it. If you anticipate problems in obtaining aid from the programs described in this chapter, or if you need further information, contact a legal services agency or a welfare rights group in your area. For the names and addresses of these groups, consult the Directory of Services at the back of this handbook.

# 12 THE EQUAL RIGHTS AMENDMENT

SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
SECTION 3. This amendment shall take effect two years after the date of ratification.

The Equal Rights Amendment (ERA) was first introduced in Congress in 1923, an outgrowth of the fight for women's suffrage. Nearly 50 years later, the proposed Twenty-seventh Amendment to the U.S. Constitution passed the U.S. Congress[1] and was sent to the 50 states for ratification. Three fourths (38) of the states must approve the amendment by March 22, 1979, if it is to become part of our law.

The Wisconsin Legislature ratified the ERA in April 1972, making Wisconsin the fourteenth state to approve the amendment. At this writing, 34 states have ratified the ERA. Two of these states, Nebraska and Tennessee, have voted to rescind their earlier approval of the amendment. Legal precedent indicates, however, that a state that has ratified an amendment cannot subsequently nullify its ratification; therefore both states continue to be counted among those that have ratified the ERA.

The amendment is now only four states short of approval, yet its ratification is not assured. A highly organized, well-financed movement of opposition has spearheaded efforts to defeat the proposal in the remaining states, the result being that no states have succeeded in ratifying the amendment for more than a year. Additionally, equal rights amendments to state constitutions have been defeated in New York, New Jersey, and Wisconsin.[2]

Many people wonder why we need a federal equal rights amendment. They point to the Fourteenth Amendment's equal protection clause; to equal employment legislation passed in the 1960s and 1970s; to recent laws prohibiting discrimination in education and credit; to court cases requiring sex equality in jury duty, child custody, and many other areas; to state equal rights amendments. Why, they ask, with all of these legal requirements for equality, do we need to amend the U.S. Constitution? Aren't men and women "equal" already?

We need an equal rights amendment because men and women are not now, and never have been, equals under U.S. law. Thomas Jefferson explained the position of the country's founders this way:

> Were our state a pure democracy there would still be excluded from our deliberations women, who, to prevent deprivation of morals and ambiguity of issues, should not mix promiscuously in gatherings of men.[3]

The Fourteenth Amendment to the U.S. Constitution, enacted after the Civil War to guarantee racial equality, introduced the word *male* (as a modifier to *citizen*) into the Constitution, making it clear that a country that was ready to free its slaves still considered women as inferior social and legal beings. Two generations later, after nearly a century of struggle, women were granted the right to vote—the first step in a long journey toward equality.[4] Three years thereafter, in 1923, the federal ERA was first introduced in Congress. More than 50 years later, women are still working for legal recognition of the principle that the law should not treat them differently simply because of their sex.

Of course, there has been some improvement in women's legal, social, and economic status in the last 50 years. Important advances for working women have been achieved through federal and state legislation.[5] Other legislation prohibits discrimination by educational institutions[6] and credit-granting agencies.[7] Court cases in recent years have protected women's rights in a variety of contexts. But all of this is not enough. We are moving toward equality through legislation and court action, but our progress is neither consistent nor uniform. Women may struggle to win equal treatment in one state or in one court's jurisdiction, but their effort does not help women in other locations. A subsequent court decision or new legislation can quickly limit, erode, or reverse a hard-won advance; without a constitutional amendment, reform may be only temporary. The same battles must be refought, perhaps literally hundreds of times, before all women can benefit. And reform is piecemeal, concentrating on specific situations and problems rather than attacking discrimination on a broad basis. For every law that is changed, there are many more discriminatory provisions which remain unaffected. Each legislative proposal or lawsuit requires substantial time and money; to continue at this rate means that we will still be fighting the same battles a hundred years from now, as our predecessors fought those battles a hundred years ago.

## EFFECT OF AN EQUAL RIGHTS AMENDMENT

A federal equal rights amendment would establish a requirement for equal treatment in every state, in every court's jurisdiction, in every aspect of the law. It would provide a basis for the development of a uniform, permanent standard of equality, similar to the development of the standard for racial equality, based on the Thirteenth, Fourteenth and Fifteenth Amendments, that has evolved through court and administrative decisions. The ERA would not impose an absolute requirement of identical treatment for the two sexes in all instances. It would require that distinctions based on sex be carefully scrutinized and would prohibit such distinctions where the following three conditions are met:

1. The distinction or discrimination is conducted by a state or federal agency. (The ERA would *not* affect private conduct; it would apply only where "state action" is involved.)



98

2. The distinction or discrimination does not interfere with personal privacy. (The constitutional right of privacy protects the right to sex-segregated rest rooms, dormitories, and the like.)
3. The distinction or discrimination does not directly and narrowly focus on physical characteristics unique to one sex (so that, for example, the government could provide special medical care and nutritional supplements to pregnant women and nursing mothers).

The U.S. Supreme Court has been unwilling to require this strict scrutiny in sex discrimination cases based on the Fourteenth Amendment, though it strictly scrutinizes race discrimination cases. In *Frontiero* v. *Richardson*,[8] decided in 1973, four of the nine justices joined in a plurality opinion declaring that a strict standard of review should be applied to sex discrimination cases. Since the four did not constitute a majority of the court, this view does not have the force of law. Three other justices, in a separate opinion, expressed their view that the court should defer a decision on the issue of the standard of review until the ERA is either ratified or defeated. In the years following the *Frontiero* decision, the Court has apparently adopted this policy, since it has been reluctant even to discuss the issue of strict scrutiny in subsequent sex discrimination cases. This unwillingness to apply the Fourteenth Amendment rigorously to sex discrimination cases underscores the need for legislative action prohibiting sex discrimination on a broad basis.

The ERA is a broadly worded proposal—modeled on the constitutional amendments guaranteeing racial equality—that would protect both men and women from sex discrimination. Perhaps in part because it is so general, many people feel that its intent is ambiguous at best and that it may do more harm than good. Lack of understanding of legal precedents and acceptance of the status quo have slowed the ratification process. However, 15 states have added an equal rights amendment to their state constitution, without suffering the dire results predicted by ERA opponents. This is because other constitutional rights and legal principles exist which preserve needed protections and privileges under our present system of laws, while permitting the extension of these protections and privileges under an equal rights amendment.

Opponents of the ERA have expressed the fear that certain legal protections or benefits that women currently enjoy will be eliminated if the ERA is ratified. There seem to be three major areas of concern: the draft, protective labor legislation, and the homemaker's right to support.

While in the past only men have been subject to the draft, currently no one is being drafted. Were the draft to be reinstated, it is likely that women would be drafted even without an ERA. The Congress has the power to draft whomever it chooses, and the idea of drafting women is not new. Nearly 30 years ago, before the thought of drafting women was emotionally linked with the ERA, General Dwight D. Eisenhower commented on the women soldiers serving in World War II:

> In the disciplinary field, they were . . . a model for the army. More than this their influence throughout the whole command was good. I

am convinced that in another war they have got to be drafted just like the men.[9]

The ERA would require that any reinstatement of the draft be applied equally to both sexes. It would also require that assignments, opportunity to participate in training programs, and fringe benefits be allocated to both draftees and enlistees on the basis of individual choice and capacity rather than simply by sex. It would not require that military personnel of different sexes share quarters or sanitary facilities; the right of privacy permits the provision of same-sex living accommodations.

Protective labor legislation, in reality, encompasses two very different sorts of laws. One type is truly beneficial and provides actual improvement in the working conditions of female employees. An example is legislation requiring a minimum wage for women. The limitation of such a benefit to women is a form of discrimination against men. Legal precedent and the legislative history of the ERA indicate that the accepted method for eliminating discrimination is to extend the benefit to the other sex, rather than invalidating a law which benefits only one sex.[10] All workers should benefit from the extension of truly protective legislation.

The other type, ostensibly "protective," actually prevents women workers from obtaining jobs and therefore imposes a burden rather than providing a benefit. An example would be legislation providing that women can work a maximum of eight hours a day. The effect of such a law is that women are prevented from working overtime and receiving the premium rate of pay for overtime work. They are also automatically excluded from jobs where overtime is compulsory. Thus, many women who would accept the opportunity to work overtime are denied the chance to do so, while at the same time men who might prefer a 40-hour week are forced to work overtime. Both sexes are treated unfairly. The burden should be removed, and women should be able to seek jobs requiring overtime work if they choose. At the same time, limits need to be set on the amount of overtime work which an employer may require, so that workers who would prefer not to work long hours of overtime are not forced to do so.

Many opponents of the ERA have played upon the economic dependence of homemakers by asserting that the ERA will require homemakers to take paying jobs to support themselves. In fact, the ERA will provide nonwage-earning spouses with much more economic security than they have under current law. Instead of an arbitrary assignment of support responsibilities to the husband and homemaking and child care duties to the wife, married couples will be treated as economic equals who share all family responsibilities and who may allocate specific functions according to their own needs and desires without placing a spouse who chooses to remain in the home at a severe financial disadvantage. People will be able to work out their family relationships as they have in the past, but a homemaker's contributions will be given economic weight when a marriage terminates through death or divorce.[11] Difficult decisions, such as the awarding of alimony, will be based solely on sex-neutral factors, including one party's need and the other party's

ability to pay, rather than an obligation arbitrarily imposed on the basis of sex. In no state that has passed a state equal rights amendment has a woman been forced out of the home and into the labor market. In no state that has passed a state equal rights amendment has a husband been relieved from the duty to support a homemaker wife or their minor children.[12]

Women living in states that have passed an equal rights amendment can offer reassurance to those who fear the consequences of implementing equal rights legislation. A woman from Pennsylvania, which adopted its equal rights amendment in 1971, reports:

> Pennsylvania women have not lost rights or priviliges because of the equal rights provision, nor will they when the Federal ERA is ratified. To the contrary, women are in a stronger position, particularly in the domestic relations area, as a result of the ERA. This is due to the fact that . . . before the ERA, women had no rights to the household goods in the case of divorce. Our Supreme Court has ruled that, thanks to the ERA, such property must be regarded as the equal property of husband and wife, and must be so divided in the case of divorce. In the case of alimony, new legislation has been passed that makes alimony during the divorce proceedings available to the economically dependent spouse, but this has not altered the rights of women who have not been the primary wage earners. Furthermore, in support cases, the Supreme Court has ruled that the contributions of the homemaker to the care of the children must be considered as an economic contribution in assessing the relative support obligations. So, for the first time, women's work in the home is legally recognized.
>
> 2. There has been neither a mandate nor any action to integrate public rest rooms, sleeping quarters in public institutions or prison cells. Absolutely no invasion of privacy in these areas has been encountered in the nearly 5 years the amendment has been in effect.[13]

The ERA will commit our nation to a new perspective on the rights and responsibilities of women and men. It is a major step in the development of a legal system in which all persons—male and female—are dealt with on the basis of individual characteristics rather than arbitrarily categorized by gender, which bears no relationship to ability or need. We need the ERA to give constitutional status to the principle that men and women are equals before the law and to provide a basis for the uniform implementation of that principle throughout the 50 states.

# REFERENCES

**Chapter 1—Marriage**


1. I. Blackstone, *Commentaries* (1765), pp. 442-445.
2. *Wis. Stats.*, Ch. 246, "Property Rights of Married Women," was enacted in 1850.
3. Herma Hill Kay, Professor of Law at the University of California at Berkeley, in a speech given Sept. 28, 1974, in Madison, Wisconsin.
4. Baker v. Nelson, 291 Minn. 310, 191 NW 2d 185 (1971), app. dismissed 409 U.S. 810 (1972), homosexual marriage prohibited; Reynolds v. U.S., 98 U.S. 145 (1878), polygamy outlawed.
5. Ch. 94, *Laws of Wis.* (1975), amending *Wis. Stats.*, Sec. 245.02 to equalize the marriage age for men and women.
6. *Wis. Stats.*, Sec. 245.03 (1975).
7. *Wis. Stats.*, Sec. 245.01 (1975).
8. Boddie v. Connecticut, 401 U.S. 371 (1971); *In re* Campbell's Estate, 260 Wis. 625, 51 NW 2d 709 (1952).
9. Fricke v. Fricke, 257 Wis. 124, 42 NW 2d 500 (1950); French v. McAnarney, 290 Mass. 544, 195 NE 714 (1935).
10. McGuire v. McGuire, 157 Neb. 226, 59 NW 2d 336 (1953).
11. *Wis. Stats.*, Sec. 246.15 (1975).
12. Estate of Daniels, 53 Wis. 2d 611, 193 NW 3d 847 (1972).
13. Estate of Daniels, 53 Wis. 2d at 614 (1972).
14. Dillon v. Dillon, 46 Wis. 2d 659 (1969).
15. *Wis. Stats.*, Sec. 36.27 (2) (b) (1975).
16. *Wis. Stats.*, Secs. 36.16 (1) (a) and (b) and 37.11 (8) (a) and (b) (1975).
17. *Wis. Stats.*, Sec. 247.08 (1973).
18. *Wis. Stats.*, Sec. 247.07 (8) (1973).
19. *Wis. Stats.*, Secs. 52.05 and 52.055 (1973).
20. The Equal Credit Opportunity Act, PL 93-495 (1974), prohibits the denial of credit on the basis of sex or marital status but permits creditors in separate property states to deny credit to homemakers who do not earn outside income.
21. *Wis. Stats.*, Sec. 247.26 (1975).
22. *Wis. Stats.*, Sec. 861.05 (1975).
23. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.
24. Kersten v. Wisconsin Department of Revenue, 71 Wis. 2d 757 (1976).
25. Ch. 222, *Laws of Wis.* (1975), amending *Wis. Stats.*, Sec. 72.12 (6). This law applies to all joint tenants, whether or not they are married to each other.


**Chapter 2—Divorce and Legal Separation**


1. *Wis. Stats.*, Sec. 247.07 (1975).
2. *Wis. Stats.*, Sec. 247.07 (4) (1975).
3. *Wis. Stats.*, Sec. 247.05 (3) (1975).
4. *Wis. Stats.*, Secs. 247.05-247.06 (1975).
5. *Wis. Stats.*, Sec. 247.23 (1975).
6. *Wis. Stats.*, Sec. 247.08 (1) (1975).
7. *Wis. Stats.*, Sec. 247.085 (1975).
8. *Wis. Stats.*, Secs. 247.24 and 247.26 (1975).
9. *Wis. Stats.*, Sec. 245.10 (1975).
10. *Wis. Stats.*, Sec. 247.24 (1) (1975). See also Sommers v. Sommers, 33 Wis. 2d 22, 146 NW 2d 428 (1966).
11. See Podell, Peck, and First, "Custody—To Which Parent?" 56 *Marquette L. Rev.*, 51 (1972).
12. Jensen v. Jensen, 168 Wis. 502, 170 NW 735 (1919).

13. Jenkins v. Jenkins, 173 Wis. 592, 595, 181 NW 826 (1921).
14. *Wis. Stats.*, Sec. 247.24 (3) (1975).
15. Scolman v. Scolman, 66 Wis. 2d 761, 226 NW 2d 388 (1975).
16. *Wis. Stats.*, Sec. 247.25 (1975).
17. Schmitz v. Schmitz, Wis. 2d, 236 NW 2d 657 (1975).
18. Dittberner v. Dittberner, 54 Wis. 2d 671, 196 NW 2d 643 (1972).
19. *Ibid.*; Bleivas v. Bleivas, 47 Wis. 2d 635, 178 NW 2d 35 (1970).
20. *Wis. Stats.*, Sec. 247.30 (1975).
21. Balaam v. Balaam, 52 Wis. 2d 20, 187 NW 2d 867 (1970); Hirth v. Hirth, 48 Wis. 2d 491, 180 NW 2d 601 (1970).
22. *Wis. Stats.*, Sec. 247.26 (1975).
23. Taake v. Taake, 70 Wis. 2d 115, NW 2d (1975).
24. *Wis. Stats.*, Sec. 247.32 (1975).
25. "The Equal Rights Amendment and Alimony and Child Support Laws," Appendix C, *Women in 1971*, Citizens' Advisory Council on the Status of Women, U.S. Government Printing Office (Washington, DC: 1972).
26. *Financial Circumstances*, part II-A, U.S. Department of Health, Education and Welfare, No. SRS 75-03765, U.S. Government Printing Office (Washington, DC: 1974).
27. *Wis. Stats.*, Sec. 247.37 (1975).
28. *Wis. Stats.*, Sec. 247.265 (1975).
29. Social Services Amendments of 1974, PL 93-647 (1975).
30. *Wis. Stats.*, Sec. 52.10 (1975), The Revised Uniform Reciprocal Enforcement of Support Act.
31. Parsons v. Parsons, 68 Wis. 2d 744, 755, 229 NW 2d 629 (1975).
32. *Wis. Stats.*, Sec. 247.26 (1975). See also Parsons v. Parsons, *op. cit.*; Markham v. Markham, 65 Wis. 2d 735, 223 NW 2d 6168 (1974); Lacey v. Lacey, 45 Wis. 2d 378, 173 NW 3d 142 (1970).
33. Ch. 94, *Laws of Wis.* (1975), amending *Wis. Stats.*, Sec. 247.20.

**Chapter 3—Parental Rights and Responsibilities**

1. *1975 Handbook on Women Workers*, Women's Bureau, U.S. Department of Labor, Bul. 297, U.S. Government Printing Office (Washington, DC: 1975). In 1974, children of gainfully employed mothers numbered 26.8 million; 913,000 of these children were under the age of 6.
2. *Wis. Stats.*, Sec. 52.03 (1975).
3. *Wis. Stats.*, Sec. 52.05 (1975).
4. *Wis. Stats.*, Sec. 52.055 (1975).
5. *Wis. Stats.*, Sec. 52.01 (1) (a) (1975).
6. PL 93-647, Part B, 42 U.S.C. 651 *et seq.* (Jan. 4, 1975).
7. *Wis. Stats.*, Sec. 45.25 (2) (1975), created by Ch. 82, *Laws of Wis.* (1975).
8. 42 U.S.C. 602 (1975).
9. *Wis. Stats.*, Sec. 49.19 (4) (h) (1975), created by Ch. 82, *Laws of Wis.* (1975).
10. *Wis. Stats.*, Ch. 48 (1975).
11. 29 C.F.R., Sec. 1604.10 (1974). Although the U.S. Supreme Court has said that it will treat the guidelines with "great deference"—Griggs v. Duke Power Co., 401 U.S. 424 (1971)—they do not have the force of law. The court has rejected only one guideline in the past—Espinoza v. Farah Mfg. Co., 414 U.S. 86 (1973) (discrimination on the grounds of citizenship is permissible).
12. Cohen v. Chesterfield County School Board and Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974).
13. Geduldig v. Aiello, 417 U.S. 484 at 496-497, n. 20 (1974).
14. General Electric Company v. Gilbert, 45 U.S.L.W. 4031 (U.S. Supreme Court, Dec. 7, 1976).
15. Ray-O-Vac v. LHR Department, 70 Wis. 2d 919 (1975).
16. Brooklyn Union Gas Company v. New York State Human Rights Appeal Board, *et al.*, Div. No. 495, N.Y. Ct. App. (Dec. 20, 1976).

17. Cal. AB 3881, Sec. 985, Subsec. 2626.2, California Laws of 1976.
18. Ackerman v. Board of Education, 7 E.P.D. par. 9152 (S.D.N.Y., 1974); Danielson v. Board of Higher Education, 358 F. Supp. 22 (S.D.N.Y., 1972).
19. I. Blackstone, *Commentaries* (1765), pp. 454-459.
20. *Wis. Stats.*, Sec. 69.30 (1) (1975).
21. See Gomez v. Perez, 409 U.S. 535 (1973), holding that the natural father is required to support his illegitimate child if state law compels him to support his legitimate children.
22. Jiminez v. Weinberger, 417 U.S. 628 (1974). See also Richardson v. Davis and Richardson v. Griffin, 409 U.S. 1969 (1972).
23. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972).
24. New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619 (1973).
25. Levy v. Louisiana, 391 U.S. 68 (1968). See also Glona v. American Guarantee and Liability Insurance Co., 391 U.S. 73 (1968).
26. Labine v. Vincent, 401 U.S. 532, rehearing denied 402 U.S. 990 (1971).
27. Norton v. Mathews, 44 U.S.L.W. 5135 (6-29-76); Mathews v. Lucas, 44 U.S.L.W. 5139 (6-29-76).
28. Stanley v. Illinois, 405 U.S. 645 (1972).
29. See LeMon v. Zelker, 358 F. Supp. 554 (S.D.N.Y., 1973).
30. *In re* Wynn, N.Y. Sup. Ct. (1-6-76) (2 F.L.R. 2170).
31. *Wis. Stats.*, Sec. 48.40 (1975).
32. *Wis. Stats.*, Sec. 48.42, 48.425 (1975).
33. *Wis. Stats.*, Sec. 48.42 (3) (1975).
34. State *ex rel.* Lewis v. Lutheran Social Services, 59 Wis. 2d 1 (1973).
35. Stanley v. Illinois, 405 U.S. 645 (1972). See also Department of Health and Rehabilitation Services v. Herzog, 1 F.L.R. 2744 (Fla. Ct. App., 1975); Catholic Charities of Dubuque v. Zakesky, 1 F.L.R. 2789 (Iowa Sup. Ct., 1975).
36. *Wis. Stats.*, Secs. 48.025 and 48.195 (1975).
37. Ms. Linda Waddington, Madison Regional Office of the Department of Health and Social Services, reports that only 10 to 15 percent of the notices elicit any response, and that responding fathers have uniformly terminated their rights (Conversation, July 1976).

**Chapter 4—Names**

1. *In re* Kruzel, 67 Wis. 2d 138, 266 NW 2d 458 (1975).
2. *Ibid.*
3. *Ibid.*
4. *Wis. Stats.*, Sec. 296.36 (1973); *Wis. Stats.*, Sec. 240.27 (1975).
5. Niesen v. Niesen, 38 Wis. 2d 599 (1968); *Wis. Stats.*, Sec. 296.36 (1973).
6. *In re* Kruzel, *op. cit.*
7. *Wis. Stats.* Sec. 247.20 (1975).
8. Op. Wis. Att'y Gen. No. 74-118 (1974).
9. Niesen v. Niesen; *Wis. Stats.*, Sec. 296.36 (1973).
10. *Wis. Stats.*, Sec. 296.36 (1973).

**Chapter 5—Employment**

1. Women's Bureau, Employment Standards Administration, U.S. Department of Labor (Washington, DC: 1974).
2. *1975 Handbook on Women Workers*, Women's Bureau, U.S. Department of Labor, Bul. 297, U.S. Government Printing Office (Washington, DC: 1975).
3. Title VII, Civil Rights Act of 1964, as amended, PL 92-261 (1972).
4. *Wis. Stats.*, Secs. 111.31-111.37 (1973, as amended, 1975).
5. Ray-O-Vac v. ILHR Department, 70 Wis. 2d 919 (Wis. S. Ct., 1975).
6. Watkins v. ILHR Department, 69 Wis. 2d 782 (Wis. S. Ct., 1975).
7. *Wis. Stats.*, Sec. 111.33, as amended by Ch. 94, *Laws of Wis.* (1975).
8. National League of Cities v. Usery, 44 *Law West* 4974 (1976).

9. *Wis. Stats.*, Sec. 118.20, as amended by Ch. 94, *Laws of Wis.* (1975).
10. *Wis. Stats.*, Sec. 118.195.
11. Weeks v. Southern Bell Tel. & Tel. Co., 408 F 2d 228 (C.A. 5) (1969).
12. Griggs v. Duke Power Co., 401 U.S. 424 (1971).
13. Ch. 94, *Laws of Wis.* (1975).
14. Swiss Colony, Inc. v. ILHR Department, 72 Wis. 2d 46 (Wis. S. Ct., 1975).
15. Employee Retirement Income Security Act of 1974, PL 93-1280 (1974).

**Chapter 6—Education**

1. Title IX, Educational Amendments Act, PL 92-318 (1972), 20 U.S.C. Secs. 1681, 1682, 1683, 1685, and 1686, implemented by 45 C.F.R. 304 *et seq.*, Part 86, *Federal Register*, Vol. 40, No. 108 (June 4, 1975).
2. Equal Educational Opportunities Act, PL 93-380 (1974).
3. Emergency School Aid Act, 20 U.S.C. Sec. 1681, implemented by 39 C.F.R. 22232, Sec. 86.31 (June 20, 1974).
4. Title IV, Civil Rights Act of 1964, as amended by Equal Employment Opportunities Act, PL 92-261 (1972).
5. Titles VII and VIII, Public Health Service Act, PL 92-585 (1972).
6. Title IV, Educational Amendments Act, PL 92-318 (1972).
7. Ch. 94, *Laws of Wis.* (1975).
8. Memorandum from Wisconsin state superintendent of public instruction to all teacher training institutions (1972).
9. *Final Title IX Regulations Implementing Education Amendments of 1972*, Office of Civil Rights, U.S. Department of Health, Education and Welfare (Washington, DC: 1975), p. 18.
10. Vorcheimer v. School District of Philadelphia, 44 U.S.L.W. 2473 (C.A. 3, 3-16-76).
11. Ch. 15, *Laws of Wis.* (1974), amending *Wis. Stats.*, Sec. 119.30 (1973).
12. 45 C.F.R. 304 *et seq.*, Sec. 86.41 (c), *Federal Register*, Vol. 40, No. 108 (June 4, 1975).
13. *Ibid.*, Sec. 46.41 (b). Baseball and softball are not considered contact sports (HEW manual on enforcing Title IX, September 1975).
14. For example, HEW ruled that men could be barred from the women's volleyball team even though there was no volleyball team for men. Letter from Martin Gerry, acting director of Office of Civil Rights, cited in *Peer Perspective*, Vol. 2, No. 2 (July 1976).
15. Trent v. Perritt, 391 F. Supp. 171, 173 (S.D. Miss., 1975).
16. Breen v. Kahl, 419 F. 2d 1034 (C.A.F., 1969). But see Karr v. Schmidt, 460 F. 2d 609 (C.A. 5, 1974).
17. *Wis. Stats.*, Sec. 118.15 (4m) (1975).
18. 45 C.F.R. 304 *et seq.*, Sec. 86.40, *Federal Register*, Vol. 40, No. 108 (June 4, 1975).
19. *Federal Register*, Vol. 81, No. 86 (May 3, 1976).
20. "Adams v. Matthews," *Education Daily*, Vol. 9, No. 117 (June 16, 1976).

**Chapter 7—Family Planning**

1. Ch. 346, *Laws of Wis.* (1975), amending *Wis. Stats.*, Sec. 450.11.
2. Eisenstadt v. Baird, 405 U.S. 438 (1972); Baird v. Lynch, F. Supp. (W.D. Wis., 1974).
3. Roe v. Wade, 410 U.S. 113 (1973); Doe v. Bolton, 410 U.S. 179 (1973).
4. Ch. 159, *Laws of Wis.* (1973), creating *Wis. Stats.*, Secs. 140.275, 441.06 (6) and 448.06 (8).
5. Ch. 384, *Laws of Wis.* (1975), creating *Wis. Stats.* 448.03 (5).
6. Weinstock, Tietze, Jaffe, and Dryfoos, "Abortion Need and Services in the United States, 1974-75," *Family Planning Perspectives*, Vol. 8, No. 2 (Mar.-Apr. 1976).
7. Doe v. Mundy, 514 F. 2d 1179 (C.A.F., 1975), aff'g 378 F. Supp. 731 (E.D. Wis., 1974).

8. Doe v. Ceci, 517 F. 2d 1203 (C.A.F., 1975), aff'g 384 F. Supp. 7 (E.D. Wis., 1974); Wulff v. Singleton, 508 F. 2d 1211 (C.A. 8, 1974), cert. granted *sub nom* Singleton v. Wulff, 95 S. Ct. 2655 (1975). But see Mother Doe v. Steward, F. Supp. (E.D. La., 1976), holding that states may decide whether to pay for elective abortions.
9. Singleton v. Wulff, 95 S. Ct. 2655 (1975); Beal v. Doe, 44 U.S.L.W. 3761. See also Maker v. Roe, Docket No. 75-1440 (filed 4-9-76); Toia v. Klein, Docket No. 75-1749 (filed 6-2-76).
10. 1975 Assembly Bill 421, introduced by Representative Joanne Duren.
11. Planned Parenthood v. Danforth, 44 U.S.L.W. 5197 (U.S. Supreme Court, July 1, 1976). See also Jones v. Smith, 278 So. 2d 339 (Fla. App., 1973); Doe v. Rampton, 366 F. Supp. 189 (D. Utah, 1973); Coe v. Gerstein, 376 F. Supp. 695 (S.D. Fla., 1973), aff'd 517 F. 2d 787 (C.A. 5, 1975).
12. See Murray v. Vandevander, 522 P 2d 302 (Okla. Ct. App., 1974).
13. See 4 and 5, above.
14. See Baldwin v. Sanders, 2 Fam. L. Rptr. 2455 (S.C. Sup. Ct., Mar. 1976), where a South Carolina court held that a wife's action for damages resulting from a pregnancy conceived after her husband's vasectomy stated a valid claim.
15. *Wis. Stats.*, Sec. 46.12 (1975).
16. But see *In re* Joseph Lee Moore, 44 U.S.L.W. 2385 (N.C. Sup. Ct., Jan. 1976), which held that a North Carolina statute authorizing the sterilization of a mentally ill or retarded person who would not be able to care for children violates neither due process nor equal protection rights.
17. *Guardianship of M.L.A., Incompetent*, Dane County Court, Branch 1 (1975).
18. Paul, Pilpel, and Wechsler, "Pregnancy, Teenagers and the Law, 1976," *Family Planning Perspectives*, Vol. 8, No. 1 (Jan.-Feb. 1976).
19. In Planned Parenthood v. Danforth—44 U.S.L.W. 5197 (U.S. Supreme Court, July 1, 1976)—the U.S. Supreme Court held that a state cannot constitutionally impose a blanket parental consent requirement as a condition for an unmarried minor's abortion during the first trimester of pregnancy because there is no significant state interest in so doing and because such a requirement violates the right of privacy. See also Coe v. Gerstein, 376 F. Supp. 695 (S.D. Fla., 1973), aff'd 517 F. 2d 787 (C.A. 5, 1975); Doe v. Rampton, 366 F. Supp. 189 (D. Utah, 1973); Doe v. Zimmerman, 2 Fam. L. Rptr. 2131 (U.S. D.C. Middle Pa., Dec. 1975).
20. But see Doe v. Planned Parenthood, 29 Utah 2d 356, 510 P. 2d 75 (1973), where the Utah Supreme Court held that minors have no right to contraceptive care.
21. General Letter FS-76-54 by Lowell D. Trewartha, Director, Bureau of Program Planning and Development (May 17, 1976).
22. Ch. 6, *Laws of Wis.* (1975), amending *Wis. Stats.*, Sec. 143.07 (1).
23. See, e.g., Strnad v. Strnad, 290 Misc. 786, 78 N.Y.S. 2d 390 (Sup. Ct., 1948); Gursky v. Gursky, 39 Misc. 2d 1083 242 N.Y.S. 2d 406 (Sup. Ct., 1963).

**Chapter 8—Taxes and Social Security**

1. *Internal Revenue Code*, Sec. 1 (c).
2. *Internal Revenue Code*, Sec. 6013.
3. *Internal Revenue Code*, Sec. 151.
4. *Internal Revenue Code*, Sec. 44A (a).
5. *Internal Revenue Code*, Sec. 44A (d).
6. *Internal Revenue Code*, Sec. 44A (f) (4).
7. *Wis. Stats.*, Sec. 71.09.
8. *Internal Revenue Code*, Sec. 2031.
9. *Wis. Stats.*, Sec. 72.18 (1975).
10. *Wis. Stats.*, Sec. 72.17 (1975).
11. *Wis. Stats.*, Sec. 72.61 (1975).
12. *Wis. Stats.*, Sec. 72.63 (1975).
13. *Wis. Stats.*, Sec. 72.12 (6) (b) (1) (1975).

14. *Wis. Stats.*, Sec. 72.12 (6) (b) (2) (1975).
15. *In re* Estate of Kersten, 71 Wis. 2d 757 (1975).
16. *Wis. Stats.*, Sec. 72.81 (1975).
17. *Wis. Stats.*, Sec. 72.82 (1975).
18. *Wis. Stats.*, Sec. 72.87 (1975).
19. *Wis. Stats.*, Sec. 72.83 (1975).
20. *Internal Revenue Code*, Sec. 2010.
21. *Internal Revenue Code*, Sec. 2101 (d).
22. *Internal Revenue Code*, Sec. 2202 (b).
23. *Internal Revenue Code*, Sec. 2202 (1).
24. *Internal Revenue Code*, Sec. 2202 (b) (2).
25. *Internal Revenue Code*, Sec. 2202 (c).
26. *Internal Revenue Code*, Sec. 2040.
27. *Internal Revenue Code*, Sec. 2515.
28. *Internal Revenue Code*, Sec. 214.
29. Tish Sommers, "Social Security: Who's Secure?" *Equal Rights Monitor* (August 1976).
30. *Ibid.*
31. *Social Security Programs in the United States*, Social Security Administration, U.S. Department of Health, Education and Welfare, Publication No. (SSA) 73-11915 (Washington, DC: 1973).
32. *Report of the President's Advisory Council on Social Security* (Washington, DC: 1975).
33. *1975 Handbook on Women Workers*, Women's Bureau, U.S. Department of Labor, Bul. 297, U.S. Government Printing Office (Washington, DC: 1975). In 1973 the median annual income for women was $2796—about one third the $8056 median annual income for men.
34. Weinberger v. Wiesenfeld, 420 U.S. 636 (1975).
35. See Mathews v. Goldfarb, 596 F. 2d 308 (C.A. 2, 1975), cert. granted 2/23/76; Mathews v. Jablon, 399 F. Supp. 118 (USDC Md., 1975); Mathews v. Coffin (D.C.D.C., 1975).
36. *Report of the President's Advisory Council on Social Security, op. cit.*, p. 37.
37. Sommers, *op. cit.*
38. *Ibid.*
39. *Report of the President's Advisory Council on Social Security, op. cit.*, p. 42.
40. Sommers, *op. cit.*

**Chapter 9—Business Practices**

1. Ch. 256, *Laws of Wis.* (1975), amending *Wis. Stats.*, Sec. 942.04.
2. Ch. 94, *Laws of Wis.* (1975), amending *Wis. Stats.*, Secs. 66.395 (2m), 66.40 (2m), 66.43 (2m), 66.431 (3) (e) 2, 66.432 (1), 66.465 (2m), and 101.22.
3. United States of America v. Wisconsin, No. 74C-3, U.S. District Court, Western District of Wisconsin (1975), found unconstitutional the provision of *Wis. Stats.*, Sec. 101.22 (1) and (1m) (1973), which prohibited testing.
4. Housing and Community Development Act, PL 93-383 (1974).
5. Equal Credit Opportunity Act, PL 93-495 (1974).
6. John D. Long and Davis W. Greggs, *Property and Liability Insurance Handbook* (Homewood, Ill.: Richard D. Irwin, Inc., 1965), pp. 27-28.
7. Janet Sydlaske, "Comment: Gender Classifications in the Insurance Industry," *Columbia Law Review*, Vol. 75:1381.
8. *Ibid.*
9. *1976 Wisconsin Insurance Commissioner's Report*, Table 1, Commissioner of Insurance (Madison: 1976), p. 5-1.
10. *Women and Insurance*, California Commission on the Status of Women (Feb. 1975); *A Study of Insurance Practices That Affect Women*, Iowa Commission on the Status of Women (Feb. 1975); *Women's Task Force Report to the Michigan Commissioner of Insurance in Sex Discrimination in Insurance*, Michigan Department of Commerce

Insurance Bureau (June 1975); *Insurance and Women*, Task Force on Critical Problems, New York State Senate (Oct. 1974); *Insurance Commissioner's Advisory Task Force on Women's Insurance Problems* (final report and recommendations), Pennsylvania Insurance Department (June 1974).

11. McCarren-Ferguson Act, S. 340 15 U.S.C., Sec. 1011 (1945).
12. *Wis. Stats.*, Sec. 15.73 (1975).
13. *Wis. Stats.*, Sec. 625.11 (1975).
14. Ch. 94, *Laws of Wis.* (1975) and Ch. 162, *Laws of Wis.* (1973).
15. *Wis. Stats.*, Sec. 632.32 (2) (b) (1975).
16. Letter from Spencer L. Kimball, American Bar Foundation to Wisconsin Legislative Council (Nov. 1972).
17. California, Iowa, Michigan, New York, and Pennsylvania Studies, *op. cit.*, 10, above.
18. *Wis. Admin. Code*, Sec. Ins 6.54.
19. *Wis. Admin. Code*, Sec. Ins 6.55.
20. Conversations with Bradford Gile, Mary Ellyn Drury, and Roy Andersen, Office of the Commissioner of Insurance (Aug. 1976).
21. Ray-O-Vac v. ILHR Department, 70 Wis. 2d 919 (1975).
22. See Melanie Huff, "Maternity Leave and Benefits," Wisconsin Legislative Council Staff Information Memorandum 76-4 (Madison: 1976).
23. Robert I. Mehr, *Life Insurance Theory and Practice*, 4th ed. (Dallas: Business Publications, Inc., 1970), pp. 278-282.
24. California, Iowa, Michigan, New York, and Pennsylvania Studies, *op. cit.*, 10, above.
25. *Ibid.*
26. *Ibid.*
27. Davis W. Gregg, *Life and Health Insurance Handbook*, 2d ed. (Homewood, Ill: Richard D. Irwin, Inc., 1964), pp. 249-253.
28. California, Iowa, Michigan, New York, and Pennsylvania Studies, *op. cit.*, 10, above.
29. *Ibid.*
30. *Wis. Admin. Code*, Sec. Ins 6.55.
31. Mehr, *op. cit.*, pp. 73-152.
32. *Ibid.*
33. *Ibid.*
34. California, Iowa, Michigan, New York, and Pennsylvania Studies, *op. cit.*, 10, above.
35. *Ibid.*
36. Sharon Abel, Testimony on Proposed Rule, Ins 6.55.
37. *Wis. Stats.*, Sec. 206.181 (6) (1975).
38. Bradford Gile, actuary, Office of the Commissioner of Insurance (conversation).
39. C. A. Williams, Jr., and R. M. Heins, *Risk Management and Insurance*, 2nd ed. (New York: McGraw-Hill, Inc., 1971), pp. 316-323.
40. *Wis. Stats.*, Sec. 344.01 (1975).
41. *Wis. Stats.*, Sec. 344.33 (2) (1975).
42. *Wis. Stats.*, Sec. 632.34 (7) (1975).
43. *Wis. Stats.*, Sec. 632.32 (3) (1975).
44. California, Iowa, Michigan, New York, and Pennsylvania Studies, *op. cit.*, 10, above.
45. *Wis. Stats.*, Sec. 138.20 (1973).
46. *Equal Credit Opportunity Act*, PL 93-495 (1974); 15 U.S.C. 1691, *et seq.*, 12 CFR Part 202 (Regulation B) (1975).
47. *Ibid.*, Regulation B, Sec. 202.5 (f).
48. *Ibid.*, Sec. 202.4 (b) and (e).
49. *Ibid.*, Sec. 202.7 (a).
50. *Ibid.*, Sec. 202.5 (e).
51. *Ibid.*, Sec. 202.5 (h).
52. *Ibid.*, Sec. 202.5 (b).
53. *Ibid.*, Sec. 202.5 (i).
54. *Ibid.*, Sec. 202.5 (d) (2).
55. *Ibid.*, Sec. 202.5 (m).

56. *Ibid.*, Sec. 202.9 (a).
57. *Ibid.*, Sec. 202.6.
58. *Ibid.*, Sec. 202.12.
59. *Ibid.*, Sec. 202.13.
60. *Ibid.*, Sec. 202.10.

**Chapter 10—Criminal Law**

1. *Crime in the United States: 1970*, U.S. Department of Justice (Washington, DC: 1971), p. 12. See also *Study in Neglect: A Report on Women Prisoners*, Women's Prison Association (New York: 1972).
2. *Prisoners in State and Federal Institutions for Adult Felons*, LEAA Criminal Justice Information and Statistics Service, Bul. No. 47 (Washington, DC: 1972), p. 6.
3. Edith E. Flynn, "The Special Problems of Women Offenders," *We Hold These Truths*, Proceedings of the National Conference on Corrections, LEAA (Washington, DC: 1971).
4. Kathryn W. Burkhart, *Women in Prison* (New York: Doubleday and Co., 1973), p. 78.
5. W. Reckless and B. Kay, *The Female Offender*, Consultants' Report to the President's Commission on Law Enforcement and Administration of Justice (Unpublished report, 1967).
6. Virginia A. McArthur, *From Convict to Citizen*, District of Columbia Commission on the Status of Women (Washington, DC: 1974), p. 7.
7. Edna W. Chandler, *Women in Prison* (Indianapolis: Bobbs-Merrill Co., 1973), p. 126.
8. Marjorie Velimesis, *Report on the Survey of 41 Pennsylvania Court and Correctional Services for Women and Girl Offenders*, cited in *Women in Detention and Statewide Jail* Standards, Statewide Jail Standards and Inspection Systems Project of the American Bar Association Commission on Correctional Facilities and Services, Clearinghouse Bul. No. 7 (Washington, DC: March 1974). Male prisoners generally do *not* have family responsibilities.
9. Division of Corrections study of Taycheedah inmates, Department of Health and Social Services (Madison: Dec. 1973).
10. "Review of Manpower Programs for Offenders," Department of Labor Memorandum (1973), cited in McArthur, *op. cit.*
11. See Taylor v. Louisiana, 95 S. Ct. 692 (1975).
12. See *Wis. Stats.*, Ch. 255 (1975), generally.
13. For qualifications, see *Wis. Stats.*, Sec. 255.01 (1975). For exemptions, see *Wis. Stats.*, Secs. 255.02 (1) and (2) (1975).
14. *Wis. Stats.*, Sec. 255.02 (3) (a) (1975).
15. *Wis. Stats.*, Sec. 255.02 (3) (b) (1975).
16. *Wis. Stats.*, Ch. 973 (1975).
17. Parole Board Manual. Despite the provision in the State Equal Rights Act, Ch. 94, *Laws of Wis.* (1975), mandating state agencies to correct sex-discriminatory practices, the Department of Health and Social Services has not attempted to revise this procedure. Edward Buehler, Division of Corrections, Bureau of Probation and Parole (conversation, July 30, 1976).
18. Ch. 94, *Laws of Wis.* (1975), revising *Wis. Stats.*, Sec. 56.08 (1) (b).
19. Robert Rafferty, assistant superintendent of security at Taycheedah, and Barbara Freedman, staff psychologist, Bureau of Clinical Services, Division of Corrections, Wisconsin Department of Health and Social Services (conversations, Aug. and Sept. 1976).
20. *1971 Juvenile Detention and Correctional Facilities Census*, LEAA Criminal Justice Information and Statistics Service (Washington, DC: 1974). Specific statistics are that young women comprise 23 percent of the total juvenile population, 33 percent of the detention center population, and 35 percent of those in shelter facilities.
21. "Women in Detention and Statewide Jail Standards," American Bar Association Commission on Correctional Facilities and Services (Washington, DC: 1974).

22. *Ibid.*
23. *Ibid.* For both boys and girls, however, drug offenses constituted 6 percent of the total offenses, including both criminal charges and status offenses.
24. *1971 Juvenile Detention and Correctional Facilities Census, op. cit.*
25. 1976 Juvenile Detention in Wisconsin Report, Wisconsin Department of Health and Social Services (Madison: 1976).
26. *Ibid.*, p. 65.
27. Letter from Severa Austin, Wisconsin Council on Criminal Justice (Aug. 9, 1976).
28. *Wis. Stats.*, Sec. 944.30 (1975).
29. State v. Mertes, 60 Wis. 2d 414 (1973).
30. *Wis. Stats.*, Sec. 944.31 (1975).
31. *Wis. Stats.*, Sec. 944.33 (1) (1975).
32. *Wis. Stats.*, Sec. 944.33 (2) (1975).
33. The FBI estimates that one in ten rapes is reported.
34. See A. Medea and K. Thompson, *Against Rape* (New York: Farrar, Straus and Giroux, Inc., 1974); M. Amir, *Patterns in Forcible Rape* (Chicago: University of Chicago Press, 1971).
35. Ch. 184 *Laws of Wis.* (1975), repealing *Wis. Stats.* Secs. 944.01, 944.02, 944.10, and 944.11, and creating Sec. 940.225.
36. The law defines sexual intercourse as including, besides penile penetration, "cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or any object into the genital or anal opening of another . . ." —*Wis. Stats.*, Sec. 940.225 (5) (c) (1975). Also prohibited is sexual contact, defined as "any intentional touching of the intimate parts, clothed or unclothed, of a person to the intimate parts, clothed or unclothed, of another, or the intentional touching by hand, mouth or object of the intimate parts, clothed or unclothed, of another, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification or if such touching contains the elements of actual or attempted battery . . ." —*Wis. Stats.*, Sec. 940.225 (5) (b) (1975).
37. *Wis. Stats.*, Sec. 972.11 (2) (1975).
38. *Wis. Stats.*, Sec. 940.225 (1) (1975).
39. *Wis. Stats.*, Sec. 940.225 (2) (1975).
40. *Wis. Stats.*, Sec. 940.225 (3) (1975).
41. *Wis. Stats.*, Sec. 940.225 (3m) (1975).
42. See *Law Enforcement Problems with Intra-Family Violence*, James Bannon, Detroit Police Department (speech given to American Bar Association).
43. FBI figures reported in the *Wisconsin State Journal* (July 27, 1975). We have no statistics on wife abuse in Wisconsin, since the only recourse is an assault and battery action and a separate tally has not been kept.
44. Capps v. Capps, 2 F.L.R. 2088 (Va. Sup. Ct., 2-1-75).

**Chapter 11—Economically Disadvantaged Women**

1. Johnnie Tillmon, "Welfare is a Women's Issue," *Ms.* (Spring, 1972).
2. Statistics provided by the Wisconsin Department of Health and Social Services to the Governor's Commission on the Status of Women (1975).
3. "Child Support Collection Among Welfare Families," statement by Congresswoman Martha Griffiths, *Congressional Record* (Dec. 4, 1974).
4. Social Security Act, as amended, Title IV, 42 U.S.C., Sec. 601 *et seq.*
5. Social Security Act, as amended, Sec. 402 (a) (26), 42 U.S.C. Sec. 602 (a) (26).
6. Doe v. Schmidt, 330 F. Supp. 159 (E.D. Wis. 1971).
7. *Wis. Stats.*, Sec. 49.19 (4) (h) 1. a, as created by Ch. 82, *Laws of Wis.* (1975).
8. *Wis. Stats.*, Sec. 49.19 (4) (h), as created by Ch. 82, *Laws of Wis.* (1975).
9. Social Security Act, as amended, Sec. 402 (a) (19), 42 U.S.C. Sec. 602 (a) (19).
10. E.D. Wis. (Jan. 13, 1975), Civil Action File No. 74-C-451.
11. Daubert v. Schmidt, E.D. Wis. (June 1, 1973), Civil Action File No. 73-C-11.

12. Social Security Act, as amended, Title XVI, 42 U.S.C. Sec. 1381 *et seq.*
13. Alexander v. Silverman, 356 F. Supp. 1179 (E.D. Wis. 1973).
14. Social Security Act, as amended, Title XX, 42 U.S.C. Sec. 1397.

**Chapter 12—The Equal Rights Amendment**

1. The ERA passed the House of Representatives by a vote of 354 to 23 on Oct. 12, 1971. On Mar. 22, 1972, it passed the Senate by a vote of 84 to 8.
2. A state ERA passed the Wisconsin Legislature in 1971 and 1973 but was defeated at the polls in 1973.
3. M. Gruberg, *Women in American Politics* (1968), p. 4, cited in K. Davidson, R. Ginsburg, and H. Kay, *Sex-Based Discrimination* (St. Paul: West Publishing Co., 1974), p. 2.
4. The Nineteenth Amendment was ratified in 1920.
5. See Chapter 5 in this handbook.
6. See Chapter 7 in this handbook.
7. See Chapter 10 in this handbook.
8. 411 U.S. 677 (1973).
9. Hearings on Senate Bill 1614 before the Subcommittee on Organization and Mobilization of the House Committee on Armed Services, 80th Cong., 2nd Sess., No. 218 at 5563-64 (1948).
10. See, e.g., Frontiero v. Richardson, 411 U.S. 677 (1973).
11. See DiFlorido v. DiFlorido, 331 A.2d 174 (Pa. Sup. Ct., 1975), granting a divorcing wife half the household goods even though she had not purchased them with her own money.
12. See Slavis v. Slavis, 299 N.E. 2d 413 (Ill. App. Ct., 1973), requiring father to pay past-due child support; Schaab v. Schaab, 531 P. 2d 954 (N. Mex. Sup. Ct., 1974), upholding alimony statute; Cooper v. Cooper, 513 S.W. 2d 229 (Tex. Ct. Civ. App., 1974), property division and child support obligations favoring wife do not violate ERA because of consideration of sex-neutral factors.
13. Paper on "The Impact of the State Equal Rights Amendment in Pennsylvania since 1971," available from the Pennsylvania Commission on Women, Office of the Governor, Harrisburg, Pa. 17120. Quoted in "*...To Form a More Perfect Union": Justice for the American Woman,* Report of the National Commission on the Observance of International Women's Year, 1976, available for $5.20 from the U.S. Government Printing Office, Washington, DC 20402; single copies available free from the National Commission on the Observance of International Women's Year, Room 1004, State Department, Washington, DC 20520 ($2.00 donation requested).

# SUPPLEMENTAL READING MATERIALS*

(Pamphlets, books, and other research materials readily available)

## GENERAL

*" . . . To Form a More Perfect Union": Justice for the American Woman*, report of the National Commission on the Observance of International Women's Year, D/IWY, U.S. Department of State, Washington, DC 20520 (single copies free).

*Chronology of the Women's Movement in the U.S., 1961-1975*, D/IWY, U.S. Department of State, Washington, DC 20520 (single copies free).

*Decade for Women, World Plan of Action*, WEAL, National Press Building, Washington, DC 20045 (single copies free).

*Hiring Practices of U.S. House and Senate*, Federally Employed Women, 485 National Press Building, Washington, DC 20045 ($4).

*1975 Handbook on Women Workers*, Women's Bureau, Employment Standards Administration, U.S. Department of Labor, Bulletin 297, Washington, DC 20210 (single copies free; bulk orders $4.75 from the U.S. Government Printing Office, Washington, DC 20402).

*Publications of the Women's Bureau*, Women's Bureau, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 (single copies free).

*Women in 1974*, Citizens' Advisory Council on the Status of Women, Washington, DC 20210 (single copies free).

*Women in 1975*, Citizens' Advisory Council on the Status of Women, Washington, DC 20210 (single copies free).

*Women in Politics: A Global Review*, Worldwatch Paper 3 (Dec. 1975), Kathleen Newland, Worldwatch Institute, 1776 Mass. Ave., Washington, DC 20036 ($2).

*World Conference of the International Women's Year* (Sept. 8, 1975), Senator Charles H. Percy, Committee on Government Operations, U.S. Government Printing Office, Washington, DC 20402.

## CHILD CARE

*Resources for Decision* (1971), Edith H. Brotberg, ed., Day Care and Child Development Council, 1012 14th St., NW, Rm. 1104, Washington, DC 20005.

*The Future of the Family*, Louise Kapp Howe, ed., New York: Simon and Schuster, 1972.

*The First Three Years of Life*, Burton L. White, Englewood Cliffs, NJ: Prentice-Hall, 1975.

## EDUCATION

*Equal Rights for Women in Education*, Rep. No. 77, Education Commission of the States, 300 Lincoln Tower, 1860 Lincoln St., Denver, CO 80203 ($2.50). (Also has material on Title IX and other areas of law and legislation for women in education.)

---

*This list is a modification of the supplemental reading materials listed in *". . .To Form a More Perfect Union": Justice for the American Woman*, report of the National Commission on the Observance of International Women's Year.

## ENFORCEMENT OF THE LAWS

*Sex Discrimination—Job Evaluation and Wage Practices Which May Disadvantage Women,* (July 1975), Dr. George Hagglund, School for Workers, University of Wisconsin—Extension, 433 Lowell Hall, 610 Langdon St., Madison, WI 53706 (single copies free).

*How to Protect Your Rights in Radio and Television,* Pamela Richards and Ralph Jennings, Office of Communications, United Church of Christ, 289 Park Ave. South, New York, NY 10010.

*Making Civil Rights Sense Out of Revenue Sharing Dollars,* Rep. 50 (Feb. 1975), U.S. Commission on Civil Rights, Washington, DC 20425 (single copies free).

*Minorities and Women as Government Contractors* (May 1975), U.S. Commission on Civil Rights, Washington, DC 20425 (single copies free).

*The Federal Civil Rights Enforcement Effort—1974,* U.S. Commission on Civil Rights, Washington, DC 20425. Volume I, "To Regulate in the Public Interest" (Nov. 1974). Volume II, "To Provide . . . for Fair Housing" (Dec. 1974). Volume III, "To Ensure Equal Educational Opportunity" (Jan. 1975). Volume IV, "To Provide Fiscal Assistance" (Feb. 1975). Volume V, "To Eliminate Employment Discrimination" (July 1975). Volume VI, "To Extend Federal Financial Assistance" (Nov. 1975). Single copies free from the U.S. Commission on Civil Rights, Washington, DC 20425; bulk orders from the U.S. Government Printing Office, Washington, DC 20402 ($3).

*Women and Housing, A Report on Sex Discrimination in Five American Cities,* U.S. Department of Housing and Urban Development, U.S. Government Printing Office, Washington, DC 20402 ($3.40).

*Women's Work—Up from .878* (Jan. 1975), Mary Witt and Patricia K. Naherny, University of Wisconsin—Extension, 433 Lowell Hall, 610 Langdon St., Madison, WI 53706 (single copies free).

## ERA

*The Equal Rights Amendment: A Lifetime Guarantee,* American Civil Liberties Union, 22 East 40th Street, New York, NY 10016.

*Interpretation of the Equal Rights Amendment in Accordance with Legislative History,* Citizens' Advisory Council on the Status of Women, Department of Labor, Washington, DC 20210 (single copies free).

*The Equal Rights Amendment—Senator Ervin's Minority Report and the Yale Law Journal,* Citizens' Advisory Council on the Status of Women, Department of Labor, Washington, DC 20210 (single copies free).

"The ERA: A Constitutional Basis for Equal Rights for Women." *Yale Law Journal,* 80:5 (Apr. 1971), entire issue.

*The Equal Rights Amendment: A Report on the Proposed 27th Amendment to the Constitution,* Common Cause, 2030 N St., NW, Washington, DC 20036 (single copies free).

Materials also available through ERAmerica, 1525 M St., NW, Suite 605, Washington, DC 20005; the National Federation of Business and Professional Women Clubs, Inc., 2012 Mass. Ave., NW, Washington, DC 20036; and the League of Women Voters of the United States, 1730 M St., NW, Washington, DC 20036 (single copies free).

## HOMEMAKERS

*Toward a True Marriage Partnership,* Wisconsin Governor's Commission on the Status of Women, 30 W. Mifflin St., Madison, WI 53703.

*Legal Status of the Homemaker in Wisconsin*, D/IWY, Department of State, Washington, DC 20520 (single copies free).

"A Commentary on the Effects of the Equal Rights Amendment in State Laws and Institutions," Anne K. Bingaman, California Commission on the Status of Women, Equal Rights Amendment Project, 926 J St., Suite 1014, Sacramento, CA 95814 (single copies free).

*Recognition of Economic Contribution of Homemakers and Protection of Children in Divorce Law and Practice*, Citizens' Advisory Council on the Status of Women, Department of Labor, Washington, DC 20210 (single copies free).

*The Equal Rights Amendment and Alimony and Child Support Laws*, Citizens' Advisory Council on the Status of Women, Department of Labor, Washington, DC 20210 (single copies free).

**JUVENILE JUSTICE**

*Under Lock and Key* (Juveniles in Jails and Detention, Dec. 1974), Rosemary C. Sarri, National Assessment of Juvenile Corrections, University of Michigan, Ann Arbor, MI.

**RAPE**

*Against Our Will: Men, Women and Rape*, Susan Brownmiller, New York: Random House, 1975.

*Rape and Its Victims* (1975), National Institute of Law Enforcement and Criminal Justice, Center for Women's Policy Studies, LEAA, U.S. Department of Justice, Box 24036, Washington, DC 20724 (single copies free).

*Adam's Rib*, Ruth Herschberger, New York: Harper and Row, 1970.

**SPECIAL PROBLEMS OF WOMEN**

*Welfare Mothers Speak Out*, Milwaukee Welfare Rights Organization, New York: Norton, 1972.

*The Rights of the Poor*, Sylvia Law, New York: Avon Books, 1974.

*Booklet for Women Who Wish to Determine Their Own Names After Marriage* (1974), Center for a Woman's Own Name, 261 Kimberly Street, Barrington, IL 60010 ($2.00).

"Sexism and Racism: Feminist Perspectives," *Civil Rights Digest*, Commission on Civil Rights, Washington, DC 20425 (single copies free).

**WOMEN AND THE LAW**

*Sexist Justice*, Karen De Crow, New York: Random House, 1974.

*Sex Discrimination and the Law: Cause and Remedies*, Barbara Allen Babcock, Anne E. Freeman, Eleanor Holmes Norton, and Susan C. Ross, Boston: Little, Brown and Co., 1975.

*Sex-Based Discrimination*, Kenneth M. Davidson, Ruth B. Ginsburg, Herma Hill Kay, St. Paul: West Publishing Co., 1974.

*The Rights of Women*, Susan C. Ross, New York: Discus Books, 1973.

*The Law for a Woman*, Ellen Switzer, New York: Scribner and Sons, 1976.

**WOMEN IN POWER**

*Women in American Politics*, Martin Gruberg, Oshkosh, Wis.: Academia Press, 1968.

*How to Move Women Into Appointive Office*, D/IWY, Washington, DC 20520 (single copies free).

*Political Women*, Jean J. Kirkpatrick, New York: Basic Books, 1974.

*Profile of Women Holding Office* (Apr. 1976), Marilyn Johnson and Kathy Stanwick, Center for the American Woman and Politics, Eagleton Institute of Politics, Rutgers University, New Brunswick, NJ 08901 (essay reprinted from *Women in Public Office*).

*Clout—Women in the Mainstream*, Susan and Martin Tolchin, New York: Coward, McCann and Geoghegan, 1974.

*Women and American Politics, A Selected Bibliography, 1965-1974*, Center for the American Woman and Politics, Eagleton Institute of Politics, Rutgers University, New Brunswick, NJ 08901 ($2).

*Women Appointed to State Boards and Commissions* (Jan. 1976), Center for the American Woman and Politics, Eagleton Institute of Politics, Rutgers University, New Brunswick, NJ 08901 ($3).

*Women in Public Office: A Biographical Directory and Statistical Analysis*, Center for the American Woman and Politics, New York: R. R. Bowker, Feb. 1976.

# DIRECTORY OF SERVICES

## GENERAL

County courthouses are good sources of local information. Each courthouse has a law library and an office for the county home economist. The county home economist is part of a statewide system, and should be able to supply information on local hotlines, crisis centers, and women's counseling services. The location of the nearest district Social Security office and of the county welfare and social services departments can also be obtained at each courthouse. County welfare and social services departments can provide information regarding Medicaid, AFDC, Food Stamps, and social service programs.

Other sources of information on local availability of services to women could be the nearest YWCA center, the public library, or the telephone directory.

The following state, federal, and private agencies can serve as referral agencies and provide information on a number of subjects.

Citizens' Advisory Council on the Status of Women
U.S. Department of Labor
Washington, DC 20210 (202—523-6538)
(Publishes a variety of reports on women)

Governor's Commission on the Status of Women
30 West Mifflin Street, Room 210
Madison, WI 53703 (608—266-6855)
(Maintains an informational clearinghouse on issues of concern to women)

National Commission on the Observance of International Women's Year
IWY Secretariat, Room 1004
Department of State
Washington, DC 20520 (202—632-8888)
(Serves as a national resource providing a broad range of information on issues of concern to women)

Wisconsin Council on Human Concerns
2059 Atwood Avenue
Madison, WI 53704 (608—245-6654)
(Provides information on current social welfare legislative proposals and needs in Wisconsin)

Women's Bureau (regional office)
8th Floor
230 South Dearborn Street
Chicago, IL 60604 (312—353-6985)
(Provides information and reports on women—especially in the area of employment)

Women's Coalition
2211 East Kenwood Boulevard
Milwaukee, WI 53211 (414—964-6117)
(Provides information and workshops on issues of concern to women)

## BANKING, CREDIT, AND INSURANCE

### Agencies That Process Discrimination Complaints

Office of Consumer Protection
Department of Justice
123 West Washington Avenue
Madison, WI 53702 (608—266-1852)
or

5th Floor
819 North Sixth Street
Milwaukee, WI 53203 (414—224-1867)
(Maintains a clearinghouse for discrimination complaints)

Commissioner of Banking
30 West Mifflin Street, Room 401
Madison, WI 53703 (608—266-1621)

Commissioner of Credit Unions
4802 Sheboygan Avenue
Madison, WI 53702 (608—266-0438)

Commissioner of Insurance
123 West Washington Avenue
Madison, WI 53702 (608—266-3585)

Commissioner of Savings and Loan
131 West Wilson Street, Room 401
Madison, WI 53703 (608—266-1821)

Federal Trade Commission (regional office)
55 East Monroe Street, Suite 1437
Chicago, IL 60603 (312—353-4423)
(Enforces and provides information about the Federal Equal Credit Opportunity Act)

## CHILD CARE

Division of Family Services
Department of Health and Social Services
1 West Wilson Street
Madison, WI 53702 (608—266-3443)
(Lists licensed day care centers in the state)

## CONSUMER PROTECTION SERVICES

Office of Consumer Protection
Department of Justice
123 West Washington Avenue
Madison, WI 53702 (608—266-1852)
or
5th Floor
819 North Sixth Street
Milwaukee, WI 53203 (414—224-1867)
(Serves as the chief law enforcement agency in the state, maintains a clearinghouse for consumer fraud complaints, and provides educational materials)

## CRIMINAL JUSTICE

Benedict Center for Criminal Justice
1015 North Ninth Street
Milwaukee, WI 53233 (414—271-0135)
(Provides direct services for women in jail, follow-through advocacy in court, and citizen workshops and information on criminal justice and pending legislation)

Wisconsin Council on Criminal Justice
122 West Washington Avenue
Madison, WI 53703 (608—266-3323)
(Publishes reports on projects it has funded to improve the criminal justice system)

## EDUCATION

### Agencies That Process Discrimination Complaints

Department of Public Instruction
126 Langdon Street
Madison, WI 53702 (608—266-3390)
(Administers Wisconsin Statutes covering pupil discrimination on the basis of sex and provides information on Title IX of the federal Education Amendments of 1972)

Office of Civil Rights (regional office)
Department of Health, Education and Welfare
309 West Jackson Boulevard
Chicago, IL 60606 (312—353-7555)
(Enforces Title IX of the federal Education Amendments of 1972)

### Informational Agencies and Organizations

Advisory Council on Women's Educational Programs
1832 M Street, NW
Washington, DC 20036 (202—382-2862)
(Provides information on the federal Women's Educational Equity Act of 1974 and reports on sex discrimination in education)

Continuing Education Services
432 North Murray Street
Madison, WI 53706 (608—263-6960)
(Provides counseling for women considering enrollment in higher education programs)

Project on Status and Education of Women
Association of American Colleges
1881 R Street, NW
Washington, DC 20009 (202—287-1300)
(Maintains an informational clearinghouse on women in higher education)

Resource Center on Sex Roles in Education
National Foundation of Improvement in Education
1201 Sixteenth Street, NW, Room 701
Washington, DC 20036 (202—833-5426)
(Provides information on women's equity in education)

Women's Education Resources
University of Wisconsin—Extension
428 Lowell Hall
610 Langdon Street
Madison, WI 53706 (608—262-2576)
(Offers continuing education programs and publishes a newsletter on issues of concern to Wisconsin women)

## EMPLOYMENT

### Agencies That Process Discrimination Complaints

Equal Rights Division
Department of Industry, Labor and Human Relations
201 East Washington Avenue
Madison, WI 53702 (608—266-3145)
or
819 North Sixth Street
Milwaukee, WI 53203 (414—224-4384)
(Enforces Wisconsin Fair Employment Act)

Equal Employment Opportunity Commission (area office)
342 North Water Street
Milwaukee, WI 53203 (414—224-1111)
(Enforces Title VII of the federal Civil Rights Act)

Office on Civil Rights (regional office)
Department of Health, Education and Welfare
309 West Jackson Boulevard
Chicago, IL 60606 (312—353-7555)
(Enforces Title IX of the federal Education Amendments of 1972 and Titles VII and VIII of the Public Health Service Act)

Wage and Hour Division (area offices)
U.S. Department of Labor
303 Price Place
Madison, WI 53705 (608—252-5221)
(Enforces federal Equal Pay and Age Discrimination Acts for the western two thirds of the state)
or
601 Federal Building
517 East Wisconsin Avenue
Milwaukee, WI 53202 (414—224-3585)
(Enforces the federal Equal Pay and Age Discrimination Acts for the eastern one third of the state)

**Informational Agencies**

For information on local or state employment opportunities, unemployment, or worker's compensation, contact the local Job Service office listed in your telephone directory.

Women's Bureau (regional office)
8th Floor
230 South Dearborn Street
Chicago, IL 60604 (312—353-6985)
(Provides statistics and reports on women in employment)

## FAMILY PLANNING

**Pro-Life Information and/or Referral Services**

Birthright: Alternative to Abortion
Beloit (608—365-2844)
Madison (608—255-1552)
Milwaukee (414—272-5860)
Stevens Point (715—341-4357)

Pregnancy Counseling
(Toll free: 1-800—362-8028)

**Right to Choice Information and/or Referral Services**

Family Planning Information and Referral Service
(Toll free: 1-800—242-9922)

Planned Parenthood Association of Wisconsin
Milwaukee (414—437-9008)

Problem Pregnancy Counseling
Green Bay (414—437-9008)

Reproduction Information and Referral Service
Madison (608—238-3338)

Wisconsin Committee for Legal Abortion
Appleton (414—734-7746)
Appleton (414—733-2754)

## HOUSING

### Agencies That Process Discrimination Complaints

Equal Rights Division
Department of Industry, Labor and Human Relations
201 East Washington Avenue
Madison, WI 53702 (608—266-3145)
or
819 North Sixth Street
Milwaukee, WI 53702 (414—224-4384)
(Enforces the Wisconsin Equal Rights Act of 1975)

Department of Housing and Urban Development (area office)
744 North Fourth Street
Milwaukee, WI 53203 (414—224-1493)
(Processes individual complaints under the federal Housing and Community Development Act)

Housing Section
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530 (202—739-4139)
(Enforces the federal Housing and Community Development Act)

## LEGAL RESOURCES

### Informational Agencies and Organizations

Attorney General
State Capitol
Madison, WI 53702 (608—266-1212)
(Provides information on keeping own name after marriage)

Center for a Woman's Own Name
261 Kimberley
Barrington, IL 60010 (312—381-3112)

Department of Justice
123 West Washington Avenue
Madison, WI 53702 (608—266-1221)
(Serves as chief law enforcement agency for the state)

State Bar of Wisconsin
402 West Wilson Street
Madison, WI 53703 (608—257-3838)
(Lists Legal Aid Societies)

Women Law Students A sociation
Law Building
University of Wisconsin—Madison
Madison, WI 53706 (608—262-2240)
(Provides information for women considering law school)

Women Pro Se, Inc.
3719 West Fond du Lac
Milwaukee, WI 53216 (414—445-2470)
(Organization of people preparing their own divorce actions without legal assistance)

**Agencies and Organizations That May Provide Legal Services**

Center for Public Representation
520 University Avenue
Madison, WI 53703 (608—251-4008)
(Represents, as a interest law firm, otherwise unrepresented groups in the governmental administrative process)

NOW Legal and Defense Fund
9 West Fifty-seventh Street
New York, NY 10019 (212—688-1751)
(May provide legal representation for potential landmark sex-discrimination cases)

State Public Defender
123 West Washington Avenue
Madison, WI 53703 (608—266-3440)
(Provides representation for individuals after conviction)

WEAL Educational Legal Defense Fund
733 Fifteenth Street, Suite 202
Washington, DC 20005 (202—638-4560)
(May provide legal representation for potential landmark sex-discrimination cases)

Wisconsin Civil Liberties Union
Women's Rights Committee
1840 North Farwell Avenue
Milwaukee, WI 53202 (414—272-4032)
(May provide legal representation for selected cases testing women's constitutional rights)

**Wisconsin Legal Aid Societies**

(Provide legal representation in civil cases to low-income persons)

Wisconsin Judicare
811 North First Street
Wausau, WI 54401 (715—842-1681)
(Covers northern part of Wisconsin)

Brown County Legal Aid
Second Floor Courthouse Annex
100 South Jefferson Street
Green Bay, WI 54305 (414—437-3211, ext. 259)

Legal Aid Program
ADVOCAP
174 West Division Street
Fond du Lac, WI 54935 (414—922-7760)

Legal Aid Service
Winnebago County Bar Association
456 North Main Street
Oshkosh, WI 54901 (414—233-7611)

Legal Aid
Courthouse
La Crosse, WI 54601 (608—784-1900)

Legal Services Center of Dane County
124 South Pinckney Street
Madison, WI 53703 (608—262-0626)
(Also provides representation in criminal cases)

Legal Aid Society
610 North Jackson Street
Milwaukee, WI 53202 (414—272-2800)
(Also provides representation in criminal cases)

Milwaukee Legal Services
211 West Kilbourn Avenue
Milwaukee, WI 53203 (414—278-7722)

**Law Libraries**

Criminal Justice Reference and Information Center
L140 Law Building
University of Wisconsin—Madison
Madison, WI 53706 (608—262-1499)

State Law Library
State Capitol
Madison, WI 53702 (608—266-1600)

University of Wisconsin Law Library
Law Building
University of Wisconsin—Madison
Madison, WI 53706 (608—262-1151)

## LEGISLATION

Legislative Council
State Capitol
Madison, WI 53702 (608—266-1304)
(Prepares reports on various legislative issues)

Legislative Documents
State Capitol
Madison, WI 53702 (608—266-2400)
(Provides copies of legislative bills)

Legislative Reference Bureau
State Capitol
Madison, WI 53702 (608—266-0341)
(Provides information on various legislative issues)

**Office of state senator or assemblyperson for your district**

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402 (202—783-3238)
(Sells federal publications and documents)

WEAL
733 Fifteenth Street, Suite 202
Washington, DC 20005 (202—638-4560)
(Provides information and publishes a newsletter on current federal legislation)

Wisconsin Document Sales
202 South Thornton Avenue
Madison, WI 53702 (608—266-3358)
(Sells state publications and documents)

## TAX-RELATED QUESTIONS

### Federal Taxes

Internal Revenue Service
702 North Blackhawk Avenue
Madison, WI 53705 (Toll free: 1-800—452-9100)
or
517 East Wisconsin Avenue
Milwaukee, WI 53202 (Toll free: 1-800—452-9100)
or
137 Wisconsin Avenue
Waukesha, WI 53186 (414—271-3780)

### Wisconsin Taxes

Fiduciary-Inheritance and Gift Tax Division
Wisconsin Department of Revenue
4638 University Avenue
Madison, WI 53702 (608—266-1231)

General Property Tax Division
Wisconsin Department of Revenue
201 East Washington Avenue
Madison, WI 53702 (608—266-1611)

Income and other Taxes
Central Audit
Wisconsin Department of Revenue
4638 University Avenue
Madison, WI 53702 (608—266-2772)

## WELFARE

Welfare Advocacy Center
1347 North Twelfth Street
Milwaukee, WI 53205 (414—931-8330)

Wisconsin Welfare Rights Organization
152 West Johnson Street
Madison, WI 53703 (608—256-2794)
(Provides representation for individuals in welfare hearings)

10000-3K70057-77